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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 74

HENRY J. MILLS AND OSMOND J. LITOLFF,
PETITIONERS,

vs.

STATE OF LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED MAY 29, 1958
CERTIORARI GRANTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF LOUISIANA

No. 43,939

STATE OF LOUISIANA

VS.

HENRY J. MILLS

STATE OF LOUISIANA

VS.

OSMOND J. LITOLFF

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION—Filed February 5, 1958

In the Matter Entitled State of Louisiana vs. Henry J. Mills

and

State of Louisiana vs. Osmond J. Litolff

Criminal District Court
Section E
Parish of Orleans
State of Louisiana

HONORABLE J. BERNARD COCKE, Judge

[fol. 2] To the Honorable the Chief Justice and the Honorables the Associate Justices of the Supreme Court of the State of Louisiana.

The petition of the State of Louisiana on the relation of Henry J. Mills and on the relation of Osmond J. Litolff, with respect, shows:

I

That heretofore to wit on the 22nd day of January 1958 petitioners were subpoenaed as witnesses before the duly constituted Grand Jury for the Parish of Orleans and an attempt was made by the District Attorney for the Parish of Orleans to interrogate petitioners on said date, under oath, regarding the curren' political bribery and income tax investigation of the members of the New Orleans Police Department, and others, and petitioners at that time, on the advice of counsel, refused to answer such questions claiming their constitutional right against self incrimination as will be more fully set out in this petition.

II

That petitioners, in refusing to answer said questions, expressed a fear of federal prosecution under the income tax laws of the United States and other federal laws, all felonies, and then and there invoked the constitutional privilege afforded them under the Constitution of the State of Louisiana and the United States Constitution to refuse to answer any questions which would incriminate, or tend to incriminate them, or which would afford a link in a chain of evidence which could become the basis of subsequent prosecution under the laws of the United States of America, or which could lead to the discovery of evidence which could be made the basis of criminal prosecutions against petitioners for violating the laws of the State of Louisiana and/or the laws of the United States of America.

III

That subsequently, on the 22nd day of January 1958, the District Attorney for the Parish of Orleans, Honorable Leon D. Hubert, Jr., acting for and on behalf of the said [fol. 3] Grand Jury, filed a motion and rule for contempt against each of your petitioners because of their refusal to answer said questions, and attached to each of the said rules for contempt the testimony of your petitioners taken before the said Grand Jury and also attached to each of the said rules for contempt the written reasons given by each of your petitioners when interrogated as witnesses

before the said Grand Jury for refusing to answer the said questions, claiming their constitutional immunity against self-incrimination under the Fifth and Fourteenth Amendments to the Constitution of the United States of America and Section 11 of Article I of the Constitution of the State of Louisiana.

Which said rules for contempt against your petitioners together with the testimony taken by the official reporter before the said Grand Jury given by each of your petitioners together with the written reasons tendered by each of your petitioners in support of the claim of their right to plead the federal and state Constitutions against self incrimination, are attached hereto and made part hereof and identified as Exhibits A, B, and C.

IV

Petitioners allege that each of your petitioners was and is in actual and immediate danger of prosecution by the United States of America under the income tax laws, and other federal laws, all felonies, in that each of your petitioners is now and has been for some time under investigation by the investigating officers of the United States Internal Revenue Service and other United States officials concerning the income tax returns of each of your petitioners for the years 1948 to 1956 inclusive.

V

That each of your petitioners has been required by the investigating officers of the United States Internal Revenue Service and/or other investigating officers of the United States to sign waivers against prescription concerning petitioners' income tax returns for the years 1948 to 1951 inclusive so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed [fol. 4] against each of your petitioners for any violation of the income tax laws, or other federal statutes, which the said investigating officers should claim your petitioners have violated.

VI

Your petitioners respectfully aver that on Monday, January 27th, 1958 the said rule for contempt came on for a formal hearing before the Honorable J. Bernard Cocke, Judge of Section "E" of the Criminal District Court for the Parish of Orleans, and that each of your petitioners, to-wit, the said Henry J. Mills and the said Osmond J. Litolff did file a certain written answer to the said rule for contempt, a copy of which is attached hereto and made a part hereof, being identified as Exhibits D and E.

VII

That at the commencement of the said formal hearing and in lieu of the taking of oral testimony, there was offered, introduced and filed in evidence by agreement between Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, and Mr. Eugene Stanley, Attorney for your petitioners, a certain stipulation and agreement as to facts, same to be considered as evidence in lieu of the taking of testimony on the hearing of the rule, said stipulation identifying as true and correct and genuine the copies of the rule filed against each of your petitioners (Exhibits A & B), the written reasons given by each of your petitioners when called to testify against the said Grand Jury detailing their constitutional claim and privilege against self incrimination as well as identifying the copies of the four documents addressed to Mr. and Mrs. Henry J. Mills and Mr. and Mrs. Osmond J. Litolff, entitled "Consent fixing period of limitation upon assessment of income and profits tax", wherein petitioners and the United States Department of Internal Revenue agreed that the amount of any income, excess profits or war profits taxes due under any return or returns made by or on behalf of each of your petitioners and the wife of each of your petitioners for the taxable years ending December 31, 1948, December 31, 1949, December 31, 1950 and December 31, [fol. 5] 1951 etc. may be assessed at any time on or before June 30, 1958 against your petitioners, etc.

That the said stipulation further stipulated that the Intelligence Division, United States Internal Revenue Ser-

vice, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

That publicity through the daily newspapers, television and radio has been carried on for several months regarding such investigation by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955 inclusive.

That eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations, three of which were for income tax evasion and eight for perjury or false statements.

That there has existed and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

That your petitioners attach hereto and make part hereof copies of the said stipulation of facts aforedescribed marked exhibits F and G and also attach hereto and make part hereof copies of the waivers against prescription of and [fol. 6] concerning petitioners income tax returns for the years 1948 to 1951 inclusive, marking the same Exhibits H, I, J, K, L, M, N, and O.

VIII

That after a hearing was had on the said rule, and argument made by the said District Attorney and counsel for your petitioners, the Honorable J. Bernard Cocke on the said 27th day of January 1958 took the matter under advisement and ordered your petitioners to report back on Wednesday, January 29, 1958 informing your petitioners that he would render judgment on the said rule at that time.

IX

That on the said 29th day of January 1958 your petitioners appeared in Court as previously instructed by the trial judge and the said trial judge found your petitioners guilty of contempt of court and sentenced your petitioners to pay a fine of $100.00 and serve ten days in the Parish Prison of the City of New Orleans, and to serve ten days additional in default of the payment of the said fine.

X

That your petitioners through counsel immediately objected to the aforesaid judgment of the said trial judge and reserved their formal bill of exceptions making a part of the said bill of exceptions the rule for contempt filed against your petitioners, the testimony heard before the Grand Jury, the written reasons given by your petitioners to the said Grand Jury for declining to answer the said questions on advice of counsel, the stipulation of facts entered into by and between the District Attorney and Counsel for petitioners, the answer filed by each of your petitioners to the said rule and the judgment of the trial judge in finding your petitioners guilty, and the entire record in this case.

XI

Petitioners then and there filed through counsel a motion for a new trial which was overruled by the Court, petitioners then and there through counsel objecting to the action of the Court in overruling petitioners motion for a [fol. 7] new trial and reserved a formal bill of exceptions,

make it part of the said bill of exceptions and the entire documentary evidence set out in paragraph X of this application, as well as a copy of the written reasons of the trial judge when rendering judgment against your petitioner.

XII

That the said bills of exception were duly signed by the trial judge.

XIII

Petitioners also attach hereto and make part hereof certified copy of the Court's minutes concerning the said rule for contempt and the hearing thereon and the judgment of the Court and also attach hereto and make part hereof the written reasons given by the trial judge when rendering judgment herein.

XIV

Petitioners allege that the income tax returns of your petitioners and the wife of each of your petitioners for the taxable years ending December 31, 1948, December 31, 1949, December 31, 1950, December 31, 1951, December 31, 1952, December 31, 1953, December 31, 1954, December 31, 1955 and December 31, 1956 are now under investigation by the United States Treasury Department, Internal Revenue Service and other investigating officers of the United States Government and that the said income tax returns were filed by each of your petitioners and his wife on or about September 15th of the following calendar year.

As will appear in paragraph five of the stipulation of facts agreed upon between Honorable Leon D. Hubert, Jr., District Attorney, and Counsel for your petitioners, publicity was given through the daily newspapers, television and etc. for several months regarding the investigations embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955 inclusive—and that your petitioners income tax returns for the same years are now under investigation by the United States Treasury Department, Internal Revenue Service, as previously alleged herein.

XV

That the period of limitations of criminal prosecutions for offenses arising under the United States Internal Rev-
[fol. 8] enue laws (USCA 26-653) is six years for offenses involving,

a. The defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

b. for the offense of wilfully attempting in any manner to evade or defeat any tax or the payment thereof;

c. For the offense of wilfully aiding or assisting in, etc. of a false or fraudulent income tax return, affidavit, claim or document;

d. for the offense of wilfully failing to pay any tax or make any return at the time or times required by law;

e. for the offense of perjury or making a false return (USCA 26-7206-7207)

f. for attempting to interfere with the administration of the internal revenue laws (USCA 26-Sec. 7212)

g. for offenses arising under Section 371 of Title 18 of the U.S. Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

XVI

That should the agents of the said United States Treasury Department, Internal Revenue Service, or other officers of the United States Government having jurisdiction, claim to have discovered during the investigation of your petitioners above listed income tax returns, a violation of any of the above listed United States statutes, your petitioners will be liable to indictment and prosecution before the United States District Court for such offense or offenses.

XVII

That as is shown in the stipulation of facts entered into by and between Honorable Leon D. Hubert, Jr., District

Attorney for the Parish of Orleans, and Mr. Eugene Stanley, Counsel for your petitioners, the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion for the years 1950 to 1955 inclusive; that eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investi- [fol. 9] gations, three for income tax evasion and eight for perjury or false statements, and that there now exists cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, etc.

XVIII

Your petitioners respectfully aver that they are legally justified in refusing to answer such incriminating questions and are entitled to refuse to divulge such information about which they were interrogated by the Grand Jury under the constitutional privilege granted petitioners by the Fifth Amendment to the Constitution of the United States on the ground that such disclosures would subject petitioners to the danger of prosecution in a Federal Court and that this privilege not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in a chain of evidence needed to prosecute the claimant for a federal crime.

Principles of Law Controlling Witness' Privilege of Self Incrimination Before Grand Jury.

We will briefly call the Court's attention to the settled principles of law controlling as to a witness' right to refuse

to answer questions before an investigating body on the grounds of self incrimination.

These principles are clearly and completely set out in Hoffman v. United States, 341 U.S. 479, 71 S.Ct. 814, 95 Law Ed. 729, decided in the Supreme Court on May 28, 1951. There, the Supreme Court, through Mr. Justice Clark, enunciates the following principles:

"The Fifth Amendment declares in part that 'No person * * * shall be compelled in any criminal case to be a witness against himself * * *.'"

[fol. 10] "This guarantee against testimonial compulsion, like other provisions of the Bill of Rights 'was added to the original Constitution in the conviction that too high a price may be paid even for the unhampered enforcement of the criminal law and that in its attainment, other social objects of a free society should not be sacrificed.' Feldman v. United States, 1944, 322 U.S. 487."

"* * * This provision of the amendment must be accorded liberal construction in favor of the right it was intended to secure. Counselman v. Hitchcock, 142 U.S. 547, 562 (1892); Arndstein v. McCarthy, 254, U.S. 71-72-73 (1920)."

"The privilege afforded not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime. (Patricia) Blau v. United States, 340 U.S. 159 (1950).

"The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, Rogers v. United States, 340 U.S. 367 (1951), and to require him to answer if 'it clearly appears to the court that he is mistaken.' Temple v. Commonwealth, 75 Va. 892, 889, (1880)."

"However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.

"The trial judge in appraising the claim 'must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence.' See Taft, J., in Ex Parte Irvine, 74 F. 954, 960 (C.C.S.D. Ohio, 1896)."

"In this setting it was not 'perfectly clear, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and the answer(s) cannot possibly have such tendency' to incriminate. Temple v. Commonwealth, 75 Va. 892, 898 (1880), cited with approval in Counselman v. Hitchcock, (sic) 142 U.S. 547, 579-580 (1892).

See also Arndstein v. McCarthy, 254 U.S. 71 (1920)."

"The ends of justice require discharge of one having such a right whenever facts appear sufficient to sustain the claim of privilege."

Practically the same principles of law have been announced by the Court of Appeals, Fifth Circuit, in Estes v. Potter, 183 F. 2nd. 865 (1950) cert. denied, 340 U.S. 920, where the Court said:

[fol. 11] "The questions propounded to appellant do not disclose the incriminatory nature of the answers, sought to be elicited, but appellant does not have to prove that his answers would incriminate him to be entitled to his privilege. If that were the nature of his burden, he would be forced to divulge the very facts that the immunity permits him to suppress. A witness need only show that his answers are likely to be dan-

gerous to him, if, in the circumstances it is reasonable to infer the possibility of incrimination from the answers that the witness may give, the privilege may be claimed. It is for the court to determine, in the first instance, whether incrimination is reasonably possible from any answer the witness may give; but if such possibility exists, then the witness has the absolute right to assert his privilege which extends to more than the admission of a crime or any element thereof. The privilege bars compulsory disclosure, of any fact that tends to incriminate a witness. Counselman v. Hitchcock, 142 U.S. 547; Mason v. U.S., 244 U.S. 362; in re Willie (U.S. v. Burr) 25 Fed. Cases, page 38, 14, 692e; U.S. v. zwillman, 2nd Cir. 108 F. 2d 802; U.S. v. Weisman, 111 Fed. 2d. 260; U.S. V. Cresson, 2nd cir. 132 F. 2d. 414."

Chief Justice Marshall in the trial of United States v. Burr, 25 Fed. Case 38, at page 40, No. 14,692 (e) in connection with the claim of privilege by one Willie, secretary to Aaron Burr, enunciated the following important principle of law:

"It follows necessarily then, from this statement of things, that if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer that question or not. If, in such a case, he say upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact."

The further well-known principle of law is set forth in United States v. Jaffee, (DC-DC 1951) 98 Fed. Sup. p. 191,-94, a contempt case, where it was said:

"Moreover, it is well recognized that, once it has become apparent that the answer to a question would expose a witness to the danger of conviction or prosecution, wider latitude is permitted the witness in refusing to answer other questions upon the ground that such answers would tend to incriminate. For this

reason certain of the questions, which did indeed on their face seem quite innocent, standing alone, might well require an explanation from the defendant to justify his refusal to answer, would not require more than the claim of privilege when associated with other questions which are clearly criminatory, or which in the circumstances reasonably gave rise to apprehension of danger to the witness."

And it was held in another contempt case, United States v. Raley, (DC-DC 1951) 96 F. Sup. 495, 497, that:

"A witness ought not to be required to make an incriminating answer, and thus be put to the hazard of losing the right to claim privilege as to further questions which would elicit incriminating answers. See Rogers v. U.S., 71 S. Ct. 438."

[fol. 12] In the case of Counselman v. Hitchcock, 142 U.S. 547, (1892), the court in interpreting the validity of a statute which tended to grant immunity to an individual compelled to testify in a judicial hearing, held, "We are clearly of the opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States."

In the case of People v. Denuyl, 318 Mich. 645, 2 A.L.R. 2d 625, testimony was sought from a witness at the time under a pending Federal charge for travelling in inter-state commerce to avoid testifying in Michigan concerning a state felony. In upholding the right of the witness in refusing to answer the question on the ground of self incrimination, the court said:

"The privilege of a witness against self incrimination accorded by the State Constitution extends to protect a State witness from testifying as to matters that might tend to incriminate him in a pending prosecution in a Federal Court under a law of the United States."

In the case of In re Watson, 293 Mich. 263-284, 219 N.W. 652-551, the Court held:

"We believe that this ancient privilege should be maintained against limitations that we conceive tend to make it ineffectual, futile, and subversive of the spirit and letter of the Bill of Rights. Under our federal system of government, with co-extensive jurisdiction of State and national government, a person subject to the laws of a State is, at the same time, subject to the laws of the federal government. A citizen of a State is a citizen of the United States (Fourteenth Amendment to the United States Constitution). After a review of the authorities and a consideration of the constitutional provisions and the principles involved, we are of the opinion that the privilege against self incrimination exonerates from disclosure whenever there is a probability of prosecution in State or federal jurisdictions."

• • • • • • •

"To overcome the privilege, the extent of the immunity would have to be of such a nature that it would protect, not only against State prosecution, but also against any reasonably probable federal prosecution. The claim of the privilege in the face of a State immunity statute cannot be used as a subterfuge or pretence to refuse to answer in proceedings to detect or suppress crime. But neither can the grant of immunity be used to compel answers that will lead straight to federal prosecution. Whenever the danger of prosecution for a federal offense is substantial and imminent as a result of disclosures to be made under a grant of immunity by the State, such immunity is insufficient to overcome the privilege against self-incrimination."

[fol. 13] In the case of Marcello v. United States, 196 F. 2d. 437 (1952), the court, in citing with approval the decision reached in the case of People v. Denuyl, said:

"A method by which the privilege may be completely circumvented suggests itself when we consider that State tribunals may pursue a like course with reference to criminal offenses against the federal government. See Feldman v. United States, 322 U.S. 487, 64 S.Ct.

1082, 88 L.Ed. 1408. With such inconsistency, we may indulge the hope that more state courts will follow the lead of the Supreme Court of Michigan in the view that,

"'It seems like a travesty on verity to say that one is not subjected to self-incrimination when compelled to give testimony in a State judicial proceeding which testimony may forthwith be used against him in a Federal criminal prosecution. People v. Denuyl, 318 Mich. 645, 29 N.W. 2d. 284, 287, 2 A.L.R. 2d., 625, 628."

See Poretto v. U.S., 196 Fed. (2) 392.

In the case of State v. Kelly, 71 Sou. 2d 887 (1954) the Supreme Court of Florida, sitting en banc, after reviewing the jurisprudence on the subject, held that a witness does not have to answer questions if he can reasonably fear Federal prosecution, even though he be granted immunity under a state statute for answering the questions propounded to him by a Grand Jury.

AUTHORITIES

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Fifth Amendment—Constitution of the United States.
Feldman v. United States (1944), 322 U.S. 487.
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United States v. Raley (1951), 96 F. Supp. 495, (7 Dist. Court D.C.)
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See U.S.C.A. Constitution. Amend. 5, p. 140 and p. 96 of Supplemental Annotations for additional cases.
U.S. v Ballantyne, 237 F. 2d. 657.
Grunewald, Halperin & Balich v. United States, 77 S. Ct. 963.
People Ex rel Morse v. Nussbaum, 55 App. Div. 245, 67 NYS 492.
In re Feldstein, 103 Fed. 269 4 Am. Bankr. R. 231 2 NBN Rep. 982.
State v. Dominguez, 228 La. 284, 82 S. 2d p. 12.
State ex rel Doran v. Doran, 215 La. 151 39 So. 2d 894.

[fol. 14]

XIX

We respectfully submit that the decision of your Honors in State vs. Dominguez, as supported by the above citations, is sound in law and has not been overruled by your Honors in the case of State vs. Thomas J. Ford, et als, No. 43658 of the docket of this Court wherein writs were refused by your Honors to set aside a sentence for contempt imposed by the Honorable Frank T. Echezabal.

In the Ford case, no claim was made of a fear of federal prosecution. In fact, Judge Echezabal specifically stated that defendants not only had not been indicted or charged in the Federal Courts, *but had been informed that they were not under investigation* and in that case none of the defendants had been called upon to sign waivers nor were their income tax returns being scrutinized or investigated by the federal officials.

As his Honor, Mr. Justice Simon points out in State vs. Dominguez (228 La. p. 307), where the danger of a prosecution is imminent, the privilege of immunity should be extended to a witness.

XX

Petitioners respectfully allege that petitioners are given complete immunity against self incrimination by Section 11 of Article I of the Louisiana Constitution despite the provisions of Section 13 of Article XIX of the Louisiana Constitution, which provides that a person may be compelled to testify in any lawful proceeding against anyone

who may have been charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but that such testimony may not be afterwards used against him except for perjury.

Petitioners claim the full immunity granted them by Section 11 of Article I despite the provisions of the Section 13 of Article XIX of the Louisiana Constitution and despite the provisions of R.S. 15:468 to the same effect.

[fol. 15] Petitioners call to the attention of the Court that under Section 13 of Article XIX as well as R.S. 15:468 it is provided that the *testimony of* such a witness shall not afterwards be used against him in any judicial proceeding except for perjury in giving such testimony.

Petitioners contend that these provisions would not prevent the State, after hearing this testimony and learning certain facts from using this testimony and these facts to ferret out and discover independent evidence which could be used against petitioners in a future State prosecution. Petitioners contend that merely depriving the state of using the testimony itself against petitioners *without stating that petitioners should not be subject to a future prosecution* is an abridgement of the rights granted petitioners by Section 11 of Article I of the Louisiana Constitution.

Petitioners respectfully call to the attention of this Court the difference between the provisions of R.S. 15:468 concerning public bribery and the provisions contained in the former Article 795 of the Louisiana Code of Criminal Procedure (Dart 1932) Act No. 59 of 1878, as amended by Act 162 of 1920, which provided that *no prosecution could afterwards be had* against a witness who had been involved in a public bribery concerning matters upon which he testified.

To the same effect is Section 15 of Article XIX of the Louisiana Constitution concerning the offense of a member of the Legislature or a public officer receiving a free pass for railroad transportation as this section of the Constitution provides that any person or officer of a corporation giving this testimony against such offender *would not be liable to criminal or civil prosecution therefor.*

Petitioners respectfully quote the following from "American Jurisprudence", Volume 58, "Witnesses", page 76, paragraph 90.

> "It is generally held that under immunity statutes providing only that testimony given by a witness shall not be used against him in a criminal prosecution, one may stand upon his constitutional guaranty against being compelled to give incriminating testimony and refuse to testify when his testimony might furnish leads to other testimony which would convict him"

[fol. 16] (See numerous cases cited under Note No. 12)

> "* * * an act providing merely that no evidence given by a witness shall be used against him does not afford that complete protection to the witness which the amendment was intended to guarantee; to be valid, a statutory enactment must afford absolute immunity against future prosecutions for the offense to which the question relates."

See Corpus Juris Secundum, Volume 98 "Witnesses", citing numerous cases under Note No. 19, paragraph 234, page 249.

XXI

Petitioners respectfully allege that, as will be shown by the questions propounded to your petitioners by the District Attorney when called before the Grand Jury, petitioners at no time were given an absolute full promise of immunity against future prosecution.

The District Attorney merely informed your petitioners that he was offering them the immunity authorized by Title 14, Section 121 of the Louisiana Revised Statutes.

This Section 14:121 of the Louisiana Revised Statutes states that the offender not only must state facts under oath to the District Attorney charged with the prosecution of the offense, but also must give evidence in the future trial tending to convict another offender of bribery and then, and then only, the District Attorney *may in his discretion* grant such witnesses full immunity.

The record fails to disclose that the District Attorney informed your petitioners that they must state facts under oath and must give evidence in a future trial against an offender for public bribery and then and then only would they be entitled to receive full immunity.

The District Attorney was going on a fishing expedition when interrogating your petitioners, but at no time did the District Attorney make a promise to your petitioners that they would not face a prosecution in the future nor did he explain to them that they must first give him facts under oath and then later testify to these facts, if the District Attorney believed these facts were worthwhile, against some offender who would be tried for public bribery. [fol. 17] We respectfully contend that it was the duty of the District Attorney to unequivocally promise the witnesses that they would not be subject to any future prosecution and that he give them full and unrestricted immunity against future prosecutions. Nowhere in the questions propounded by the District Attorney to the witness Litolff and the witness Mills did the District Attorney inform these witnesses as he informed the witnesses in the Ford, Slicho and Fallon case (No. 43658 of the docket of this Court):

Question by the District Attorney:

> "In my discretion I now offer you full immunity from any prosecution as to your part in any system of bribery or graft, provided you tell the truth. Now, in that connection, if you do not tell the truth here you not only lose that immunity but, of course, you subject yourself to charges of perjury. Do you understand that?"

In the Dominguez case, 228 La. 284 82 S2d 12, the District Attorney, as will appear from the transcript of Dominguez' testimony taken before the Grand Jury, the District Attorney (see page 12 of the Criminal Court transcript) specifically informed Dominguez that he gave him full immunity from prosecution in respect to public bribery if the witness testified.

Here you have no promise by the District Attorney to these witnesses that they would not face a prosecution for

public bribery, as the District Attorney must promise before the witness can be compelled to testify.

The District Attorney in this case did not, as he did in the Ford, Slicho and Fallon case and as he did in the Dominguez case, unequivocally inform these witnesses that they would not face a future prosecution if they testified.

Not having done this, we respectfully submit that for this reason alone, defendants were justified in refusing to testify and the record in this case showing the failure of the District Attorney to give them an unrestricted and unequivocal promise against future prosecutions shows no cause of action against these witnesses for contempt and for that reason alone the conviction of the relators for contempt should be set aside and the matter remanded to the lower court to be proceeded with in accordance with law.

[fol. 18] Wherefore, for the reasons heretofore alleged, petitioners pray that writs of certiorari should issue herein from this Honorable Court, according to law directing the Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans, State of Louisiana, in the matter of State of Louisiana vs. Henry J. Mills and State of Louisiana vs. Osmond J. Litolff, proceedings for contempt, directing and ordering the said Judge to send up to this Honorable Court the record of the said case and that this Honorable Court do issue this order prohibiting and forbidding the said Honorable J. Bernard Cocke, Judge aforesaid, from attempting to execute his judgment finding your petitioners guilty of contempt of Court and sentencing your petitioners to pay a fine of $100.00 and serve ten days in the Parish Prison and in default of the payment of the said fine to serve ten days additional in the said Parish Prison.

Petitioners further pray that the said Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans, State of Louisiana, be ordered to show cause if any he has or can, on a day and hour to be fixed by thie (sic) Honorable Court, why the writ of prohibition applied for herein should not be made perpetual and why the said Judge should not be ordered to discharge your petitioners from these contempt proceedings and to hold that petitioners were entitled to claim the

constitutional privileges granted each of them by the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States of America.

In the alternative, petitioners pray that this Honorable Court, under its supervisory powers do itself set aside the judgment of the lower court finding your petitioners guilty of contempt and dismiss and discharge your petitioners from the said contempt proceedings and do itself recognize the right of your petitioners to each claim his constitutional privileges against self-incrimination under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States of America, and do itself annul and set aside the sentence imposed by the said Honorable J. Bernard Cocke, Judge aforesaid, on your peti-
[fol. 19] tioner Henry J. Mills and on your petitioner Osmond J. Litolff, as above set out.

That written notice of the intention of your petitioners to apply to this Honorable Court for writs of certiorari, prohibition and mandamus was given by your petitioners to the said Honorable J. Bernard Cocke, Judge aforesaid, and the said Honorable Leon D. Hubert, Jr., District Attorney, as will more fully appear by reference to copies of the said notices attached hereto and made part hereof.

That as will more fully appear in the affidavit attached hereto and made part hereof, copies of this application for writs of certiorari, mandamus and prohibition for and on behalf of your petitioners were sent by mail to Honorable J. Bernard Cocke, Judge aforesaid and Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans.

And petitioners further pray for all general and equitable relief.

Eugene Stanley, Atty for Petitioners

Duly sworn to by Eugene Stanley, jurat omitted in printing.

[fol. 20] (Affidavit of service omitted in printing.)

[fol. 20a]

IN THE SUPREME COURT OF LOUISIANA

MEMORANDUM ON BEHALF OF HENRY J. MILLS AND OSMOND J. LITOLFF IN SUPPORT OF APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION—Filed February 5, 1958

[fol. 20b] May It Please Your Honors:

We have attempted to cover the law fully in our application for writs and have set out at length therein the authorities which we contend support our position.

There is no doubt that the decision of your Honors in State vs. Dominguez, 82 S. 2d 12, 228 La. 284 is complete authority for the legal proposition that a witness called before the State Grand Jury who is actually under a pending prosecution in the Federal Court is entitled to claim his constitutional right against self incrimination under the Fifth Amendment.

In the Dominguez case, his Honor, Mr. Justice Simon cited the case of State ex rel Doran vs. Doran, 215 La. 151, 39 S. 2d 894, in which your Honors held that a witness was justified in invoking the privilete (sic) against self incrimination on the ground that his answer to questions arising in habeas corpus proceedings in a Louisiana Court might incriminate him in a criminal prosecution of a pending indictment returned against him in the State of California for the crime of kidnapping.

His Honor, the trial Judge, did not follow your Honors jurisprudence in State vs. Dominguez (supra) and cited the case of State vs. Ford, et als decided January 9, 1953, No. 43658 of the docket of the Supreme Court (Mr. Justice Moise), because in the Ford case, the defendants were not under indictment nor charged by the federal authorities and your Honors held that since Ford et als were not only not under investigation but had been told by the federal authorities that their income tax returns were not under investigation, Ford et als were not justified in claiming their constitutional privilege against self incrimination.

In the present case the record shows that the relators, Henry J. Mills and Osmond J. Litolff, refused to answer

the questions, claiming their constitutional privilege against self incrimination, because each of the said relators was and is in actual and immediate danger of prosecution by [fol. 20c] the United States Internal Revenue Service and other United States officials concerning their income tax returns for the years 1943 to 1956 inclusive.

That each of the relators has been required by such investigating officers of the United States Internal Revenue Service, etc. to sign waivers against prescription concerning relators income tax returns for the years 1948 to 1951 inclusive, so as to afford such investigating officers an opportunity to proceed against relators for any violation of the United States Income Tax Laws or other federal statutes which the said investigating officers should claim or might claim have been violated.

Relators aver in their application that the period of limitations of criminal prosecutions for offenses arising under the United States internal revenue laws (see pages 6 and 7 of application for writs citing U.S. Code, Chapter 26, paragraph 653) is six years.

That should the agents of the said United States Treasury Department, Internal Revenue Service or other officers of the United States government having jurisdiction claim to have discovered a violation of the listed statutes concerning income tax returns, relators will be liable to indictment and prosecution before the United States District Court for such offense or offenses.

We respectfully submit that relators fear of a federal prosecution in the future is well grounded for the reason that if relators are compelled to answer the questions propounded to them by the District Attorney, same would afford a link in a chain of evidence which could become the basis of subsequent prosecution against relators under the laws of the United States of America or which could lead to the discovery of evidence which could be made the basis of future criminal prosecutions against relators under the laws of the United States of America.

That relators fear is well grounded is apparent from a reading of the stipulation of facts entered into between [fol. 20d] Honorable Leon D. Hubert, Jr., District Attorney, and counsel for relators, wherein it was stipulated

and admitted that the Intelligence Division, United States Internal Revenue Service, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion and that great publicity through the newspapers, television and radio has been given to this investigation, it being specifically stated that the income tax investigations covered the returns of some of the members of the New Orleans Police Department for the years 1950 to 1955—the same period of time covered by the agents of the United States Department of Internal Revenue in their investigation of the returns of relators plus the years 1948 and 1949.

That eleven indictments have already been returned by the United States Grand Jury against members of the New Orleans Police Department, growing out of said investigations, three of which were for income tax evasion and eight for perjury or false statement.

The District Attorney for the Parish of Orleans admitted in said stipulation that there has existed and now exists cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America as well as with the Police Bureau of investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion.

The District Attorney of the Parish of Orleans admitted in said stipulation that he has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

[fol. 20e] A further distinction between the case of relators and the case of State vs. Ford, No. 43658 is that relators Henry J. Mills and Osmond J. Litolff support their claim that they are actually under investigation by the United States Department of Internal Revenue for their

income tax returns of 1948, 1949, 1950 and 1951 by filing in evidence the waivers and stipulations against prosecution entered into by and between relators and officials of the United States Government which were filed as evidence herein and which in the stipulation of facts entered into between the District Attorney and counsel for relators were admitted to be true, correct and genuine triplicate copies of what they represented themselves to be and could be considered as evidence herein.

Certainly the factual situation here is entirely different as found by Mr. Justice Moise in the Ford and Slicho case (No. 43658).

The trial judge in his reasons for finding relators guilty of contempt made no mention of the fact that your relators were actually under investigation by the United States authorities and that their claim of actually being under investigation by the United States authorities was established by the introduction of the waivers offered as evidence herein which waivers were admitted by the District Attorney in the stipulation entered into between the District Attorney and counsel for relators to be true and correct.

Certainly the factual situation in this case is well within the language of Mr. Justice Simon in State vs. Dominguez, 82 S2d 12 228 La. Rep. p. 284 (See page 302 of the 228 La.).

Citing State ex rel Doran vs. Doran, 215 La. 151 39 So. 2d 894, in which Mr. Justice Simon pointed out that a witness was justified in refusing to answer questions tending to incriminate him in a jurisdiction other than the one [fol. 20f] where the privilege is being invoked if there exists ground that the disclosures by the witness would subject him to the danger of a prosecution in a federal court where the danger is imminent and that the privilege of immunity should be extended to a witness.

Not only might relators be subjected to prosecutions before the United States District Court for the violation of the income tax laws or other kindred laws, but they have the right to believe that the danger of such prosecution is not only possible but imminent, particularly since the District Attorney for the Parish of Orleans admits that he has been and is collaborating and cooperating not only with the United States Attorney for the Eastern District

of Louisiana but with investigating officials of the United States Treasury Department of Internal Revenue Service.

As we point out in our application, we respectfully contend that the record shows that the District Attorney did not make relators an unequivocal promise against future prosecutions in the State Court, as he did the witnesses Ford and Slicho (No. 43658 of the docket of this Court) and as he did in the Dominguez case, 228 La. 284 82 S. 2d 12. Certainly your relators were entitled to be told by the District Attorney, "In my discretion I now offer you full immunity from any prosecution as to your part under any system of bribery or graft, provided you tell the truth."

Merely to inform relators "Under the laws of Louisiana and particularly Title 14, Section 121, the District Attorney may offer full immunity from prosecution to any witness who states facts under oath with reference to his own participation in any offense of public bribery, and in addition to that, another law, Section 468 of Title 15 and the Constitution of the State of Louisiana provide that any person who gives testimony in a proceeding concerning public bribery cannot withhold his testimony. Moreover, his own testimony cannot ever be used against him except in the [fol. 20g] case of perjury. The result of all that is that if the District Attorney offers you immunity, you must testify unless you are under charges in the Federal Court. Now, I understand that you are not under charges in the Federal Court. Is that correct? Now I am the District Attorney and I give you immunity under the laws which I have cited above and in addition, you have immunity under the Constitution of the State of Louisiana * * *" is certainly not informing the witness as the witnesses were informed in the case of Ford and Slicho, No. 43658, and as Dominguez had been informed that the District Attorney offered the witness full immunity from any future prosecution as to the part of the witness in any system of bribery or graft, provided the witness tell the truth.

For that reason alone, the District Attorney having failed to promise the witnesses specifically and definitely and positively that the witnesses would not be prosecuted for

the part of the witness in any system of public bribery or graft, relators' claim of constitutional privilege against self incrimination is, we respectfully submit, legally justified.

Pretermitting the question as to whether or not it was the intention of your Honors in your decision in Ford and Slicho (No. 43658), to limit a right of the witness to claim his constitutional privilege only when under federal indictment, we respectfully submit that your Honors in this case should grant relators a writ and should eventually hold that the District Attorney not having specifically promised relators that they would not fact (sic) a future prosecution, that the rule for contempt should be dismissed and relators discharged.

The District Attorney in that event can bring your relators back before another Grand Jury and after making them a positive and unequivocal promise against future prosecution which relators would be free to accept or reject, relators will have an opportunity to accept such promise and give testimony or if rejecting the District [fol. 20h] Attorney's definite and unequivocal promise against future prosecutions, the District Attorney can then file another rule for contempt against relators.

For the above reasons and the reasons set out in our application for the writs, we respectfully submit that relators are entitled to the issuance of the writs prayed for and after due proceedings had, to the relief prayed for in their application for writs filed herein.

Respectfully submitted, /s/ Eugene Stanley, Attorney for Relators.

[fol. 24]

IN THE CRIMINAL DISTRICT COURT OF THE STATE OF LOUISIANA

Section "E"

No.

STATE OF LOUISIANA

VS.

HENRY J. MILLS

STATE OF LOUISIANA

VS.

OSMOND J. LITOLFF

BILL OF EXCEPTIONS

Be it remembered that on the 29th day of January, 1958 w' en the trial judge found your defendants, Henry J. Mills and Osmond J. Litolff, guilty of contempt of Court, your said defendants through counsel did object to the said judgment and did reserve a Bill of Exceptions making a part of the said Bill of Exceptions the entire evidence heard on the trial of this rule and did then and there file a motion for a new trial, which was overruled by the Court, and defendants then and there through counsel objected to the action of the Court in overruling their motion for a new trial and did reserve a formal Bill of Exceptions making a part of the said Bill of Exceptions the rule for contempt filed against your defendants, the testimony heard before the Grand Jury, the written reasons given by your defendants to the said Grand Jury for declining to answer the said questions on advice of counsel, the stipulation of facts entered into by and between the District Attorney and counsel for defendants, the answers filed by each of your defendants to the said rule, and the judgment of the trial court in finding your defendants guilty as well as the

written reasons given by the trial judge in support of his judgment, the minutes of the Court and the entire record in this case.

Now your defendants, Henry J. Mills and Osmond J. Litolff, reserve this their formal Bill of Exceptions and attach to and make a part of the same the rule for contempt filed against your defendants, the testimony heard [fol. 25] before the Grand Jury, the written reasons given by your defendants to the said Grand Jury for declining to answer the said questions on advice of counsel, the stipulation of facts entered into by and between the District Attorney and counsel for defendants, the answer filed by each of your defendants to the said rule, and the judgment of the trial judge in finding your defendants guilty, and the written reasons given by the trial judge in support of his said judgment, the minute entries of the court covering this matter as well as the entire record in this case, as follows to wit:

[fol. 26]

IN PARISH OF ORLEANS

STATE OF LOUISIANA

Orleans Parish
Grand Jury

MOTION FOR AND ORDER GRANTING RULE TO SHOW CAUSE (LITOLFF CASE)—January 22, 1958.

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its Foreman, James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 22, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana;

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery Osmond Litolff, having been duly subpoenaed, was called and sworn as a

witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of his rights and obligations under the law and after having been given immunity by the District Attorney under the provisions of R. S. 14:121, when asked the questions contained in the attached exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and their replies being as contained in the said exhibit.

Wherefore, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said Osmond Litolff, to show cause on the 27th day of January, at 10:00 A.M., 1958, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal [fol. 27] District Court for the Parish of Orleans.

/s/ James J. Reiss, Foreman, Grand Jury for The Parish of Orleans

New Orleans, Louisiana
January 22, 1958

ORDER GRANTING RULE TO SHOW CAUSE

Considering the foregoing Motion it is ordered that Osmond Litolff show cause on the 27th day of January, 1958, at 10:00 A. M., o'clock, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans and of the Criminal District Court for the Parish of Orleans.

/s/ J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans.

[fol. 28]

EXHIBIT A TO MOTION FOR RULE TO SHOW CAUSE

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY,
WEDNESDAY, JANUARY 22, 1958

Present:

Mr. Leon D. Hubert, Jr., District Attorney

Mr. John Nelson, Jr., Assistant District Attorney

Members of the Grand Jury.

MR. OSMOND J. LITOLFF, after being first duly sworn by the Foreman of the Grand Jury, testified as follows:

By Mr. Hubert:

Q. Mr. Litolff, this Grand Jury is making an inquiry into police bribery and graft in the City of New Orleans, particularly with reference to payments by gamblers to the Police Department for the purpose of protection from arrest. Under the laws of Louisiana and particularly Title 14, Section 121, the District Attorney may offer full immunity from prosecution to any witness who states facts under oath with reference to his own participation in any offense of public bribery, and in addition to another law, Section 468 of Title 15 and the Constitution of the State of Louisiana provide that any person who gives testimony in a proceeding concerning public bribery cannot withhold his testimony. Moreover, his own testimony cannot ever [fol. 29] be used against him except in a case of perjury. The result of all that is, that if the District Attorney offers you immunity you must testify unless you are under charges in the Federal Court. Now, I understand that you are not under charges in the Federal Court, is that correct? Now, I am the District Attorney and I hereby give you immunity under the laws which I have cited above, and in addition you have immunity under the Constitution of the State of Louisiana. I understand further you are not under any State charges, is that correct?

A. That is correct.

Q. Now, Mr. Litolff, will you answer Mr. Nelson's questions?

By Mr. Nelson:

Q. Mr. Litolff, this Jury is investigating into police bribery, not public bribery, in connection with the payment of money to members of the New Orleans Police Department for purposes of protection in the operation of various gambling enterprises here in the City of New Orleans. Have you ever given any money to any member of the New Orleans Police Department for purposes of operating any type of gambling enterprise here in the City of New Orleans?

A. I am going to decline to answer that question on the ground it may incriminate me. I would like to make a statement, please.

[fol. 30] Q. As soon as I get through asking you questions.

A. I rather make the statement now.

Q. As soon as I get through asking you questions you can make any statement you want.

A. I like to insist on making my statement now.

Q. I will have to ask you to hold it.

A. All right.

Q. Mr. Litolff, have you ever authorized anyone to make any payments to any members of the New Orleans Police Department for purposes of securing protection in order to operate any type of gambling enterprise?

A. I decline to answer that question for the same reason, and first the statement I want to make was that is upon my attorney's advice. I was here last week and I requested permission to see the law and constitution that was read to me about this immunity. I didn't understand it. I am not a lawyer. I requested permission to consult a lawyer, which was granted to me. I have consulted and retained an attorney, and upon his advice I refuse to answer any question, and I have a statement that I want to read.

Q. You will be given the privilege of reading that statement.

A. I want to let you know why I am refusing it, upon my attorney's advice.

[fol. 31] Q. Mr. Litolff, have you ever seen any payments make to any member of the New Orleans Police Department for purposes of securing protection for the operation of any gambling enterprise?

A. I decline to answer for the same reason.

Q. Mr. Litolff, if you would like to make the statement you can feel perfectly free to do so. If you want to leave the statement here we can attach it to your testimony.

A. Yes, that is all right.

Q. Do you want to put your name on the top? Maybe we can get the report to mark it. (Note: The reporter identified the documents, "O. J. Litolff, 1/22/58, R. J. Ourso."

By Mr. Hubert:

Q. The Grand Jury would like you to return here at two o'clock this afternoon. You may go until that time, but you will be under the same subpena.

A. Yes, sir; I will be here.

Reporter's certificate to foregoing transcript (omitted in printing).

[fol. 32]

IN PARISH OF ORLEANS

STATE OF LOUISIANA

Orleans Parish
Grand Jury

MOTION FOR AND ORDER GRANTING RULE TO SHOW CAUSE (MILLS CASE)—January 22, 1958

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its Foreman, James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 22, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana;

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery Henry Mils, having been duly subpoenaed, was called and sworn as a witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of his rights and obligations under the law and after having been given immunity by the District Attorney under the provisions of R. S. 14:121, when asked the questions contained in the attached exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and their replies being as contained in the said exhibit.

Wherefore, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said Henry Mills, to show cause on the 27th day of January, 1958, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal District Court for the [fol. 33] Parish of Orleans.

/s/ James J. Reiss, Foreman, Grand Jury for The Parish of Orleans.

New Orleans, Louisiana
January 22, 1958.

ORDER GRANTING RULE TO SHOW CAUSE

Considering the foregoing Motion it is ordered that Henry Mills show cause on the 27th day of January, 1958, at 10:00 A. M., o'clock, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans and of the Criminal District Court for the Parish of Orleans.

/s/ J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans.

[fol. 34]

EXHIBIT A TO RULE TO SHOW CAUSE

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY
ON WEDNESDAY, JANUARY 22, 1958

Present:

Mr. Leon D. Hubert, Jr., District Attorney
Mr. John Nelson, Jr., Asst. District Attorney
Members of the Grand Jury

MR. HENRY J. MILLS, after being first duly sworn by the Foreman of the Grand Jury, testified as follows:

By Mr. Hubert:

Q. Mr. Mills, under the laws of Louisiana and particularly Title 14, Section 121, the District Attorney may offer full immunity from prosecution to any witness who states facts under oath with reference to his own participation in any offense of public bribery, and in addition to that another law, Section 468 of Title 15 and the Constitution of the State of Louisiana provide that any person who gives testimony in a proceeding concerning public bribery cannot withhold his testimony. Moreover, his testimony cannot ever be used against him except for perjury. The result of these laws is that if the District Attorney offers you immunity you must testify unless you are under charges in the Federal Court. Now, I am the District Attorney and I hereby give you immunity under the laws I have referred to, and in addition you have immunity under the Constitution and Section 468 of Title 15. Now, Mr. Mills, [fol. 35] are you presently under charges in the Federal Court?

A. Let me read this.

Q. All I want to know if you are under charges?

A. I am under investigation.

Q. You are not under charges by the Federal Government right now, is that correct?

A. Well, I am being investigated.

Q. I am talking about charges?

A. No, sir, I don't think. I don't know. I refuse to an-

swer; I will read this because I don't know anything about laws.

Q. You are not under any State charges, are you? Are you charged by the States?

A. No, I am not charged by the State. Can I read this off,—from my attorney?

Q. You may at another point.

A. But this is the time.

Mr. Hubert: I will ask Mr. Nelson to question you.

By Mr. Nelson:

Q. Mr. Mills, have you ever given any money to any members of the New Orleans Police Department for purposes of protection so that you could operate a lottery company within the Parish of Orleans?

A. With all due respect to the Grand Jury and the District Attorney, on advice of counsel I respectfully decline to answer any questions concerning my activity in the [fol. 36] lottery business, claiming my constitutional rights, self-incrimination under the 5th and 14th Amendments of the Constitution of the United States of America, and under Section 11, Article 1 of the Constitution of the State of Louisiana.

Q. Wait, Mr. Mills. The answer is satisfactory. You can make a statement later. Have you ever authorized anyone to give any bribe money to any members of the New Orleans Police Department?

A. I refuse to answer and I stand on my constitutional right, and I decline to answer.

By Mr. Hubert:

Q. You understand, Mr. Mills, you have been given immunity?

A. I decline to answer.

By Mr. Nelson:

Q. Has anyone that is associated with you in the lottery business ever paid any bribe money to the New Orleans Police Department with your knowledge?

A. I decline to answer.

By Mr. Hubert:

Q. Do you wish to state anything further?
A. No except this here.
Q. You want to read it to the Jury?
A. You want me to read it?
Q. No. It is up to you.

By Mr. Nelson:

Q. Do you want to give a copy to the Foreman?
A. I will give him a copy if it is all right.

[fol. 37] Mr. Hubert: Suppose we simply attach this document that you started to read to your testimony.
Mr. Mills: It is all right; yes.

By Mr. Hubert:

Q. Mr. Mills, this grand jury is investigating into the subject of police bribery and graft and the questions that have been asked of you are in connection with that inquiry. Now, are your answers still the same?
A. I decline to answer.
Q. Have you ever been a witness to any money being given to any policeman for the purposes of protection from arrest for violation of the gambling laws?
A. I decline to answer on advice of my attorney.
Q. Mr. Mills, can you return here under the same subpena at two o'clock this afternoon?
A. Yes, sir. Can I go now and eat some lunch?
Q. Yes, you can go and eat lunch and come back at two o'clock this afternoon.

Attached Hereto: Typewritten statement, identified as "Henry Mills, 1/22/58 (Signed) R. J. Ourso

(Reporter's certificate to foregoing transcript omitted in printing.)

[fol. 38]

STIPULATION OF FACTS AS TO HENRY J. MILLS—
Filed January 27, 1958

It is agreed by and between Honorable Leon D. Hubert, District Attorney for the Parish of Orleans, on behalf of the State of Louisiana, and Eugene Stanley, Attorney for Henry J. Mills, defendant in rule, that the following agreement and stipulation as to facts is hereby entered into by and between Counsel and shall be considered as evidence herein in lieu of the taking of testimony on the hearing of this rule:

1. That the following is a true, correct and genuine copy of the Rule filed herein by the Grand Jury for the Parish of Orleans, State of Louisiana, appearing through its foreman, Honorable James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, service of which was made (and accepted) by the said Henry J. Mills, defendant in rule, and that the copy of the transcript of the proceedings attached to the said rule is a true, correct and genuine copy of the proceedings had before the said Grand Jury on Wednesday, January 22, 1958, when the said Henry J. Mills had been duly and legally summoned as a witness before the said Grand Jury, all as reported by Mr. Robert J. Ourso, official stenographer, and duly certified as true and correct by him:

PARISH OF ORLEANS

STATE OF LOUISIANA

Orleans Parish

Grand Jury

IN RE: HENRY MILLS

MOTION

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its Foreman, James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 22, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana;

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery, Henry Mills, [fol. 39] having been duly subpoenaed, was called and sworn as a witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of his rights and obligations under the law and after having been given immunity by the District Attorney under the provisions of R.S. 14:121, when asked the questions contained in the attached Exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and their replies being as contained in the said exhibit.

Wherefore, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said Henry Mills, to show cause on the 27th day of January, 1958, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal District Court for the Parish of Orleans.

s/ James J. Reiss, Foreman, Grand Jury for the Parish of Orleans

New Orleans, Louisiana
January 22, 1958.

ORDER

Considering the foregoing Motion it is ordered that Henry Mills show cause on the 27th day of January, 1958, at 10:00 A.M., o'clock, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans and of the Criminal District Court for the Parish of Orleans.

s/ J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans

[fol. 40]

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY
ON WEDNESDAY, JANUARY 22, 1958

Present:

Mr. Leon D. Hubert, Jr., District Attorney
Mr. John Nelson, Jr., Assistant District Attorney
Members of the Grand Jury

MR. HENRY J. MILLS, after being first duly sworn by the Foreman of the Grand Jury, testified as follows:

By Mr. Hubert:

Q. Mr. Mills, under the laws of Louisiana and particularly Title 14, Section 121, the District Attorney may offer full immunity from prosecution to any witness who states facts under oath with reference to his own participation in any offense of public bribery, and in addition to that, another law, Section 468 of Title 15 and the Constitution of the State of Louisiana provide that any person who gives testimony in a proceeding concerning public bribery cannot withhold his testimony. Moreover, his testimony cannot ever be used against him except for perjury. The result of these laws is that if the District Attorney offers you immunity you must testify unless you are under charges in the Federal Court. Now, I am the District Attorney and I hereby give you immunity under the laws I have referred to, and in addition you have immunity under the Constitution and Section 468 of Title 15. Now, Mr. Mills, are you presently under charges in the Federal Court?

A. Let me read this.

Q. All I want to know if you are under charges?

A. I am under investigation.

Q. You are not under charges by the Federal Government right now, is that correct?

A. Well, I am being investigated.

Q. I am talking about charges.

[fol. 41] A. No, sir, I don't think. I don't know. I refuse

to answer; I will read this because I don't know anything about laws.

Q. You are not under any State charges, are you? Are you charged by the States?

A. No, I am not charged by the State. Can I read this off,—from my attorney?

Q. You may at another point.

A. But this is the time.

Mr. Hubert: I will ask Mr. Nelson to question you.

By Mr. Nelson:

Q. Mr. Mills, have you ever given any money to any members of the New Orleans Police Department for purposes of protection so that you could operate a lottery company within the Parish of Orleans?

A. With all due respect to the Grand Jury and the District Attorney, on advice of counsel I respectfully decline to answer any questions concerning my activity in the lottery business, claiming my constitutional rights, self-incrimination under the 5th and 14th Amendments of the Constitution of the United States of America, and under Section 11, Article I of the Constitution of the State of Louisiana.

Q. Wait, Mr. Mills. The answer is satisfactory. You can make a statement later. Have you ever authorized anyone to give any bribe money to any members of the New Orleans Police Department?

A. I refuse to answer and I stand on my constitutional right, and I decline to answer.

By Mr. Hubert:

Q. You understand, Mr. Mills, you have been given immunity?

A. I decline to answer.

By Mr. Nelson:

Q. Has anyone that is associated with you in the lottery business ever paid any bribe money to the New Orleans Police Department with your knowledge?

A. I decline to answer.

[fol. 42] By Mr. Hubert:

Q. Do you wish to state anything further?
A. No; except this here.
Q. You want to read it to the Jury?
A. You want me to read it?
Q. No. It is up to you.

By Mr. Nelson:

Q. Do you want to give a copy to the Foreman?
A. I will give him a copy if it is all right.

Mr. Hubert: Suppose we simply attach this document that you started to read to your testimony.
Mr. Mills: It is all right; yes.

By Mr. Hubert:

Q. Mr. Mills, this Grand Jury is investigating into the subject of police bribery and graft and the questions that have been asked of you are in connection with that inquiry. Now, are your answers still the same?
A. I decline to answer.
Q. Have you ever been a witness to any money being given to any policeman for the purpose of protection from arrest for violation of the gambling laws?
A. I decline to answer on advice of my attorney.
Q. Mr. Mills, can you return here under the same subpoena at two o'clock this afternoon?
A. Yes, sir. Can I go now and eat some lunch?
Q. Yes, you can go and eat lunch and come back at two o'clock this afternoon.
[fol. 43]

* * * * * * *

2. That the following is a true, correct and genuine copy of the written reasons given by the said Henry Mills, defendant in rule, to the said Grand Jury as his legal reasons for declining and refusing to answer the questions propounded him as a witness before the said Grand Jury, the said Henry Mills defendant in rule claim-

ing his constitutional right and privilege against self-incrimination as guaranteed him by the Constitution and laws of the United States of America and the Constitution of the State of Louisiana:

With all due respect to this Grand Jury and the District Attorney, on advice of counsel I respectfully decline to answer any questions concerning my alleged activities in the lottery business, claiming my constitutional right against self-incrimination under the 5th and 14th Amendments to the Constitution of the United States of America and under Section 11 of Article I of the Constitution of the State of Louisiana.

My reasons for claiming this privilege are based on the following:

1. My fear of federal prosecution under the income tax laws of the United States of America, and other federal laws, all felonies under the laws of the United States of America, as the answering of any such questions might tend to incriminate me, or would afford a link in a chain of evidence which could become the basis of subsequent prosecutions under the laws of the United States of America.

I respectfully submit that I am in actual and immediate danger of prosecution by the United States of America under the income tax laws, and other federal laws, all felonies, in that I am now and have been for some time under investigation by the investigating officers of the United States Internal Revenue Service, and other United States officials, concerning my income tax returns for the years [fol. 44] 1948 to 1956 inclusive.

I have been required by the investigating officers of the United States Internal Revenue Service and/or other investigating officers of the United States, to sign waivers against prescription of and concerning my income tax returns for the years 1948 to 1951 inclusive, so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against me for any violation of the income tax laws, or other federal statutes, which the said investigating officers should claim I have violated.

I respectfully submit that the period of limitation on criminal prosecutions for offenses arising under the United States Internal Revenue laws is six years (USCA 26-6531) and that this period of time has not elapsed regarding my income tax returns.

2. I further respectfully contend that I have the right to refuse to answer any such questions under Section 11 of Article I of the Louisiana Constitution, which provides that no person can be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to a criminal prosecution, despite the provisions of Section 13 of Article XIX of the Louisiana Constitution and Louisiana Revised Statutes, Title 14, Section 121.

I contend that said Section 13 of Article XIX of the Louisiana Constitution and Louisiana Revised Statutes, Title 14, Section 121, abridges the constitutional privilege against self-incrimination granted me by Section 11 of Article I of the Louisiana Constitution, as this testimony might furnish leads to other testimony which could be used to convict me of offenses under the laws of the State of Louisiana.

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3. That the following four documents (Form 872-Rev. Nov. 1956) U.S. Treasury Department, Internal Revenue Service, all dated May 8, 1957, triplicate, addressed to Mr. and Mrs. Henry Mills, taxpayers, of 4817 St. Charles Avenue, New Orleans, Louisiana, entitled "Consent fixing period of limitation upon assessment of income and profits [fol. 45] tax" each signed by Mr. and Mrs. Henry Mills and by Mr. Cecil M. Sanders, Group Supervisor for Mr. Chester A. Usry, District Director of Internal Revenue, for the years ending December 31, 1948, 1949, and 1950 and by Mr. William P. Blake, Associate Chief, Appellate Division for Mr. William G. Cullen, Assistant Regional Commissioner-Appellate for the year ending December 31, 1951, were duly signed and entered into by and between the said parties, and it was agreed therein that the amount of any income, excess profits or war profit taxes due under any return or returns made by or on behalf of the above

named Mr. and Mrs. Henry Mills for the taxable years ending December 31, 1948, 1949, 1950 and 1951 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1958, except that, if a notice of a deficiency in tax is sent to said taxpayer or taxpayers by registered mail on or before said date, then the time for making any assessment is prohibited and for sixty days thereafter, and that the said documents attached hereto are true, correct and genuine triplicate copies of what they represent themselves to be, and may be considered as evidence herein.

4. That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

5. That publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955, inclusive.

6. That eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three for income tax evasion and eight for perjury or false statements.

[fol. 46] 7. That there has existed, and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon

D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

Jan 27—1958

/s/ Leon D. Hubert, District Attorney.

/s/ Eugene Stanley, Attorney for Defendant.

[fol. 47]

STIPULATION OF FACTS AS TO OSMOND J. LITOLFF

It is agreed by and between Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, on behalf of the State of Louisiana, and Eugene Stanley, Attorney for Osmond J. Litolff, defendant in rule that the following agreement and stipulation as to facts is hereby entered into by and between Counsel and shall be considered as evidence herein in lieu of the making of testimony on the hearing of this rule:

1. That the following is a true, correct and genuine copy of the Rule filed herein by the Grand Jury for the Parish of Orleans, State of Louisiana, appearing through its foreman, Honorable James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, service of which was made (and accepted) by the said Osmond J. Litolff, defendant in rule, and that the copy of the transcript of the proceedings attached to the said rule is a true, correct and genuine copy of the proceedings had before the said Grand Jury on Wednesday, January 22, 1958, when the said Osmond J. Litolff had been duly and legally summoned as a witness before the said Grand Jury, all as reported by Mr. Robert J. Ourso, official stenographer, and duly certified as true and correct by him:

Orleans Parish
Grand Jury

PARISH OF ORLEANS
STATE OF LOUISIANA

IN RE: OSMOND LITOLFF

MOTION

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its Foreman, James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 22, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana:

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery, Osmond Litolff, having been duly subpoenaed, was called and sworn as a witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of his rights and obligations under the law and after having been [fol. 48] given immunity by the District Attorney under the provisions of R.S. 14:121, when asked the questions contained in the attached exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and their replies being as contained in the said exhibit.

Wherefore, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said Osmond Litolff, to show cause on the 27th day of January, at 10:00 A.M., 1958, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal District Court for the Parish of Orleans.

s/ James J. Reiss, Foreman, Grand Jury for The Parish of Orleans.

New Orleans, Louisiana
January 22, 1958

ORDER

Considering the foregoing Motion it is ordered that OSMOND LITOLFF show cause on the 27th day of January, 1958, at 10:00 A.M., o'clock, why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans and of the Criminal District Court for the Parish of Orleans.

s/ J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans.

A true copy, E. A. Mouris, Minute Clerk.

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY, WEDNESDAY, JANUARY 22, 1958

Present:

Mr. Leon D. Hubert, Jr., District Attorney
Mr. John Nelson, Jr., Assistant District Attorney
Members of the Grand Jury.

[fol. 49] MR. OSMOND J. LITOLFF, after being first duly sworn by the Foreman of the Grand Jury, testified as follows:

By Mr. Hubert:

Q. Mr. Litolff, this Grand Jury is making an inquiry into police bribery and graft in the City of New Orleans, particularly with reference to payments by gamblers to the Police Department for the purpose of protection from arrest. Under the laws of Louisiana and particularly Title 14, Section 121, the District Attorney may offer full immunity from prosecution to any witness who states facts under oath with reference to his own participation in any offense of public bribery, and in addition to that another law, Section 468 of Title 15 and the Constitution of the State of Louisiana provide that any person who gives testimony in a proceeding concerning public bribery cannot withhold his testimony. Moreover, his own testimony can-

not ever be used against him except in a case of perjury. The result of all that is, that if the District Attorney offers you immunity you must testify unless you are under charges in the Federal Court. Now, I understand that you are not under charges in the Federal Court, is that correct? Now, I am the District Atorney and I hereby give you immunity under the laws which I have cited above, and in addition you have immunity under the Constitution of the State of Louisiana. I understand further you are not under any State charges, is that correct?

A. That is correct.

Q. Now, Mr. Litolff, will you answer Mr. Nelson's questions?

By Mr. Nelson:

Q. Mr. Litolff, this Jury is investigating into police bribery, not public bribery, in connection with the payment of money to members of the New Orleans Police Department for purposes of protection in the operation of various gambling enterprises here in the City of New Orleans. Have you ever given any money to any member of the New Orleans Police Department for purposes of operating any type of gambling enterprise herein the City of New Orleans?

A. I am going to decline to answer that question on the ground it may incriminate me. I would like to make a statement, please.

[fol. 50] Q. As soon as I get through asking you questions.

A. I rather make the statement now.

Q. As soon as I get through asking you questions you can make any statement you want.

A. I like to insist on making my statement now.

Q. I will have to ask you to hold it.

A. All right.

Q. Mr. Litolff, have you ever authorized anyone to make any payments to any members of the New Orleans Police Department for purposes of securing protection in order to operate any type of gambling enterprise?

A. I decline to answer that question for the same rea-

son, and first the statement I want to make was that is upon my attorney's advice. I was here last week and I requested permission to see the law and constitution that was read to me about this immunity. I didn't understand it. I am not a lawyer. I requested permission to consult a lawyer, which was granted to me. I have consulted and retained an attorney, and upon his advice I refuse to answer any question, and I have a statement that I want to read.

Q. You will be give the privilege of reading that statement.

A. I want to let you know why I am refusing it, upon my attorney's advice.

Q. Mr. Litolff, have you ever seen any payments made to any member of the New Orleans Police Department for purposes of securing protection for the operation of any gambling enterprise?

A. I decline to answer for the same reason.

Q. Mr. Litolff, if you would like to make the statement you can feel perfectly free to do so. If you want to leave the statement here we can attach it to your testimony.

A. Yes, that is all right.

Q. Do you want to put your name on the top? Maybe we can get the reporter to mark it. (Note: The reporter identified the document, "O.J. Litolff, 1/22/58, R.J. Ourso."

By Mr. Hubert:

Q. The Grand Jury would like you to return here at two o'clock this afternoon. You may go until that time, but you will be under the same subpoena.

[fol. 51] A. Yes, Sir; I will be here.

2. That the following is a true, correct and genuine copy of the written reasons given by the said Osmond J. Litolff, defendant in rule, to the said Grand Jury as his legal reasons for declining and refusing to answer the questions propounded him as a witness before the said Grand Jury, the said Osmond Litolff, defendant in rule, claiming his constitutional right and privilege against self incrimination as guaranteed him by the Constitution and laws of the United States of America and the Constitution of the State of Louisiana.

With all due respect to this Grand Jury and the District Attorney, on advice of counsel I respectfully decline to answer any questions concerning my alleged activities in the lottery business, claiming my constitutional right against self incrimination under the Fifth and Fourteenth amendments to the Constitution of the United States of America and under Section 11 of Article I of the Constitution of the State of Louisiana.

My reasons for claiming this privilege is based on the following:

1. My fear of federal prosecution under the income tax laws of the United States of America, and other federal laws, all felonies under the laws of the United States of America, as the answering of any such questions might tend to incriminate me, or would afford a link in a chain of evidence which could become the basis of subsequent prosecutions under the laws of the United States of America.

I respectfully submit that I am in actual and immediate danger of prosecution by the United States of America under the income tax laws, and other federal laws, all felonies, in that I am now and have been for sometime under [fol. 52] investigation by the investigating officers of the United States Internal Revenue Service, and other United States officials, concerning my income tax returns for the years 1948 to 1956 inclusive.

I have been required by the investigating officers of the United States Internal Revenue Service and/or other investigating officers of the United States, to sign waivers against prescription of and concerning my income tax returns for the years 1948 to 1951 inclusive, so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against me for any violation of the income tax laws, or other federal statutes, which the said investigating officers should claim I have violated.

I respectfully submit that the period of limitation on criminal prosecutions for the offenses arising under the United States Internal Revenue laws is six years (USCA

26-6531) and that this period of time has not elapsed regarding my income tax returns.

2. I further respectfully contend that I have the right to refuse to answer any such questions under Section 11 of Article I of the Louisiana Constitution, which provides that no person can be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to a criminal prosecution, despite the provisions of Section 13 of Article XIX of the Louisiana Constitution and Louisiana Revised Statutes, Title 14, Section 121.

I contend that said Section 13 of Article XIX of the Louisiana Constitution and Louisiana Revised Statutes Title 14, Section 121, abridges the constitutional privilege against self incrimination granted me by Section 11 of Article I of the Louisiana Constitution, as this testimony might furnish leads to other testimony which could be used to convict me of offenses under the laws of the State of Louisiana.

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3. That the following four documents (Form 872-Rev. Nov. 1956) U.S. Treasury Department, Internal Revenue Service, all dated May 8, 1957, triplicate, addressed to Mr. and Mrs. Osmond J. Litolff, 2233 St. Charles Avenue, New Orleans, Louisiana, entitled "Consent fixing period of limitation upon assessment of income and profits tax", each signed by Mr. and Mrs. Osmond J. Litolff and Mr. Cecil [fol. 53] M. Sanders, Group Supervisor for Mr. Chester A. Usry, District Director of Internal Revenue, for the years ending December 31, 1948, December 31, 1949, December 31, 1950 and December 31, 1951, were duly signed and entered into by and between the said parties, and it was agreed therein that the amount of any income, excess profits or war profit taxes due under any return or returns made by or on behalf of the above named Mr. and Mrs. Osmond J. Litolff for the taxable years ending December 31, 1948, December 31, 1949, December 31, 1950 and December 31, 1951 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1958, except that, if a notice of a deficiency in tax is sent to said taxpayer or taxpayers by registered mail on or before said date, then the time for making any

assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter, and that the said documents attached hereto are true, correct and genuine triplicate copies of what they represent themselves to be and may be considered as evidence herein.

4. That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

5. That publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955, inclusive.

6. That eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three of which were for income tax evasion and eight for perjury or false statements.

7. That there has existed and now exists, close cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investiga-
[fol. 54] tors, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

[fol. 55]

IN CRIMINAL DISTRICT COURT

SECTION "E"

No.

STATE OF LOUISIANA

v.

HENRY MILLS

ANSWER OF HENRY MILLS TO RULE FOR CONTEMPT—
Filed January 27, 1958

To the Honorable J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans, State of Louisiana, Section "E".

I.

Now Into Court comes Henry Mills and in answer to the Rule for Contempt served on your appearer respectfully states that your appearer was duly summoned to appear as a witness before the Grand Jury for the Parish of Orleans on the 22nd day of January, 1958 and duly answered the said summons of this Honorable Court ordering him to appear before the said Grand Jury and on advice of counsel respectfully declined to answer any questions concerning respondent's alleged activities in the Lottery business claiming his constitutional right against self incrimination under the 5th and 14th Amendments to the Constitution of the United States of America and under Section 11 of Article I of the Constitution of the State of Louisiana.

II.

That your respondent tendered to the District Attorney and to the said Grand Jury through its Foreman, Honorable James J. Reiss, and sought to read to the said Grand Jury a written statement prepared for your respondent by his legal advisor, a copy of which is attached hereto and made a part hereof, in which your mover claimed that his reason for so refusing to testify was mover's fear of federal prosecution under the income tax laws of the United States of America and other federal laws, all felonies under the

laws of the United States of America, as the answering of any such questions might tend to incriminate your respondent or would afford a link in a chain of evidence which [fol. 56] could become the basis of subsequent prosecution for felonies under the laws of the United States of America.

That your respondent was and is in actual and immediate danger of prosecution by the United States of America under the income tax laws, and other federal laws, all felonies, in that respondent is now, and has been for some time, under investigation by the investigating officers of the United States Internal Revenue Service and other United States officials concerning respondent's income tax returns for the years 1948 to 1956 inclusive.

III.

That your respondent has been required by the investigating officers of the United States Internal Revenue Service and/or other investigating officers of the United States to sign waivers against prescription concerning respondent's income tax returns for the years 1948 to 1951 inclusive, so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against respondent for any violation of the income tax laws, or other federal statutes which the said investigating officers should claim respondent has violated.

Respondent attaches hereto and makes part hereof the following four documents (Form 872-Rev. Nov. 1956) United States Treasury Department Internal Revenue Service, all dated May 8, 1957 and originally made in triplicate addressed to your respondent and his wife at their city address in the City of New Orleans entitled "Consent fixing period of limitation upon assessment of income and profits tax", in which it is agreed between your respondent and his wife on the one hand, and the District Director of Internal Revenue of the United States of America on the other hand, that the amount of any income, excess profits or war profits taxes due under any return or returns made by or on behalf of your respondent and his wife for the taxable years ending December 31, 1948, December 31, 1949, December 31, 1950 and December 31, 1951 under existing acts or under

prior revenue acts, may be assessed at any time on or before June 30, 1958, etc.

Respondent avers and alleges that the income tax returns of your respondent and his wife for the taxable years December 31, 1948, December 31, 1949, December 31, 1950, December 31, 1951, December 31, 1952, December 31, 1953, December 31, 1954, December 31, 1955 and December 31, 1956 are now under investigation by the United States Treasury Department, Internal Revenue Service and other investigating officers of the United States Government and that the said income tax returns were filed by respondent and his wife on or about September 15th of the following calendar year.

IV.

That the period of limitation of criminal prosecutions for offenses arising under the United States Internal Revenue laws (USCA 26-6531) is six years for offenses involving

(a) The defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner.

(b) for the offense of wilfully attempting in any manner to evade or defeat any tax or the payment thereof;

(c) for the offense of wilfully aiding or assisting in, etc., of a false or fraudulent income tax return, affidavit, claim or document

(d) for the offense of wilfully failing to pay any tax or make any return at the time or times required by law

(e) for the offense of perjury or making a false return (USCA 26-7206-7207)

(f) for attempting to interfere with the administration of the internal revenue laws (USCA 26-Sec. 7212)

(g) for offenses arising under Sec. 371 of title 18 of the U. S. Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

V.

That should the agents of the said U. S. Treasury Department—Internal Revenue Service—or other officers of the U. S. Government having jurisdiction claim to have discovered during the investigation of the above listed income tax returns of defendant in rule a violation of any of the above listed U. S. Statutes, defendant in rule would be liable to indictment and prosecution before the United States District Courts for such offense or offenses.

[fol. 58]

VI.

That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

VII.

That publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955 inclusive.

VIII.

That eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three for income tax evasion and eight for perjury or false statements.

IX.

That there has existed and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service

of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana and will hold future conferences with the said United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

[fol. 59] X.

Respondent, further answering respectfully avers that on advice of counsel, as an additional reason for refusing to answer any of the questions propounded to him before the said Grand Jury, respondent contended that he had the right to refuse to answer any such questions under Section 11 of Article I of the Constitution of the State of Louisiana which provides that no person can be compelled to give evidence against himself in a criminal case or in any proceeding which may subject him to a criminal prosecution despite the provisions of Section 13 of Article XIX of the Louisiana Constitution and the Louisiana Revised Statutes, Title 14, Section 121, in that the said Section 13 of Article XIX of the Louisiana Constitution and the Louisiana Revised Statutes, Title 14, Section 121 abridge and an (sic) attempt to abridge the constitutional privilege against self-incrimination granted respondent by Section 11 of Article I of the Louisiana Constitution, as such testimony might furnish leads to other testimony which could be used to convict respondent of offenses under the laws of the State of Louisiana.

XI.

That the provisions of Section 468 of Title 15 of the Louisiana Revised Statutes mentioned by the District Attorney as granting your respondent immunity as a witness

also abridges the rights, privileges and advantages granted respondent under Section 11 of Article I of the Louisiana Constitution in that the said Section 468 of Title 15 which provides that a person may be compelled to testify in any lawful proceeding against another charged with public bribery, etc., shall not be permitted to withhold his testimony upon the ground that it may incriminate or expose him to public infamy, merely provides that such testimony shall not afterwards be used against such person in any judicial proceeding, except for perjury in giving such testimony, likewise abridges the complete constitutional privilege against self-incrimination granted respondent by Section 11 of Article I of the Louisiana Constitution as under the said Section 15:468 of the Louisiana Revised [fol. 60] Statutes and under the said Section 13 of Article XIX of the Louisiana Constitution any facts disclosed by your respondent as such witness which would afford a link in a chain of evidence could, without the testimony of your respondent, be used against your respondent in a subsequent prosecution under the laws of the State of Louisiana.

XII.

Your respondent avers that the immunity claimed to be given your respondent by the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, under Title 14, Section 121 of the Louisiana Revised Statutes, is no immunity at all, as the said section provides that the offender under the public bribery, bribery of voters or corrupt influencing articles who states the facts under oath to the District Attorney charged with the prosecution of the offense, and who gives evidence tending to convict any such offender under those articles, may, in the discretion of said District Attorney be granted full immunity from prosecution in respect to the offense reported except for perjury in giving such testimony.

Your respondent avers that he has never stated any facts under oath to the District Attorney regarding public bribery and has never given evidence tending to convict any other offender under the public bribery articles and that the said Section 14:121 provides first that the offender must state facts under oath to the District Attorney con-

cerning the offense of public bribery and must give evidence tending to convict such offender under the public bribery articles on the trial of such offender and it is only then and under those circumstances that such offender who has stated the facts under oath and who has given evidence tending to convict the principal offender under the public bribery articles, may in the discretion of the District Attorney be granted full immunity from prosecution, except for perjury.

That the alleged promise of immunity disclosed in the record herein attempted to be given by the District Attorney to your respondent is not provided for by said R. S. 14:121 or any law of the State of Louisiana or by the Constitution of the State of Louisiana and under the said provisions even if your respondent should have first [fol. 61] stated facts under oath to the said District Attorney concerning the offense of public bribery and should actually appear in court and testify against an offender charged with the public bribery articles, it would still be in the discretion of the District Attorney to determine whether or not he would grant your respondent full and complete immunity against any and all prosecutions for offenses against the laws of the State of Louisiana.

That the said District Attorney not having specifically informed your respondent that if your respondent would give evidence tending to convict any other offender under the public bribery articles, as provided for in said Section 14:121 of the Louisiana Revised Statutes, the said District Attorney would give your respondent full and complete immunity against future prosecutions, has not offered your respondent any legal immunity at all and the Rule for Contempt filed against your respondent should be rejected and dismissed as failing to state legal grounds for contempt provided for by law.

That the said attempted promise of immunity offered your respondent by the said Honorable Leon D. Hubert, Jr., District Attorney, is merely conditional and not conclusive and would not be binding on any successor to the said Honorable Leon D. Hubert, Jr. as District Attorney, who will vacate his office on the first Monday of May, 1958, as it would then be within the sole discretion of

his successor as District Attorney for the Parish of Orleans to determine whether or not your respondent should be given immunity against prosecutions under the laws of the State of Louisiana for any offense committed against the laws of the State of Louisiana.

XIII.

That in order for a District Attorney to be able to give your respondent full and complete immunity against future prosecutions under the laws of the State of Louisiana, it would be necessary for the said revised Statutes 14:121 and Revised Statutes 15:468 to contain a provision similar to that set out in Section 15 of Article XIX of the Louisi- [fol. 62] ana Constitution which prohibits a member of the Legislature or public officers etc., a free pass and free transportation, free franking privilege or discrimination in passenger, telephone or telegraph rates from any person or corporation, to provide that no person or officer or agent of such corporation giving such free pass, etc., would not be liable to civil or criminal prosecution therefor, if he should testify to giving of the same.

Wherefore, for the reasons above set out, to be amplified in written brief filed on the hearing of this rule, respondent respectfully prays that the rule taken against him be dismissed and discharged and respondent relieved from liability and prosecution hereunder and that this answer be held sufficient to purge your defendant of contempt.

Respectfully submitted,

/s/ Eugene Stanley, Attorney for Respondent.

Duly sworn to by Henry Mills, jurat omitted in printing.

[fol. 63]

IN CRIMINAL DISTRICT COURT

SECTION "E"

No.

STATE OF LOUISIANA

v.

OSMOND J. LITOLFF

ANSWER OF OSMOND J. LITOLFF TO RULE FOR CONTEMPT—Filed January 27, 1958

To the Honorable J. Bernard Cocke, Judge, Criminal District Court, Parish of Orleans, State of Louisiana, Section "E."

I

Now Into Court comes Osmond J. Litolff and in answer to the Rule for Contempt served on your appearer respectfully states that your appearer was duly summoned to appear as a witness before the Grand Jury for the Parish of Orleans on the 22nd day of January, 1958 and duly answered the said summons of this Honorable Court ordering him to appear before the said Grand Jury and on advice of counsel respectfully declined to answer any questions concerning respondent's alleged activities in the lottery business claiming his constitutional right against self incrimination under the 5th and 14th Amendments to the Constitution of the United States of America and under Section 11 of Article I of the Constitution of the State of Louisiana.

II

That your respondent tendered to the District Attorney and to the said Grand Jury through its Foreman, Honorable James J. Reiss, and sought to read to the said Grand Jury a written statement prepared for your respondent by his legal advisor, a copy of which is attached hereto

and made a part hereof, in which your mover claimed that his reason for so refusing to testify was mover's fear of federal prosecution under the income tax laws of the United States of America and other federal laws, all felonies under the laws of the United States of America, as the answering of any such questions might tend to incriminate your respondent or would afford a link in a chain [fol. 64] of evidence which could become the basis of subsequent prosecution for felonies under the laws of the United States of America.

That your respondent was and is in actual and immediate danger of prosecution by the United States of America under the income tax laws, and other federal laws, all felonies, in that respondent is now, and has been for some time, under investigation by the investigating officers of the United States Internal Revenue Service and other United States officials concerning respondent's income tax returns for the years 1948 to 1956 inclusive.

III

That your respondent has been required by the investigating officers of the United States Internal Revenue Service and/or other investigating officers of the United States to sign waivers against prescription concerning respondent's income tax returns for the years 1948 to 1951 inclusive, so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against respondent for any violation of the income tax laws, or other federal statutes which the said investigating officers should claim respondent has violated.

Respondent attaches hereto and makes part hereof the following four documents (Form 872-Rev. Nov. 1956) United States Treasury Department Internal Revenue Service, all dated May 8, 1957 and originally made in triplicate addressed to your respondent and his wife at their city address in the City of New Orleans entitled "Consent fixing period of limitation upon assessment of income and profits tax", in which it is agreed between your respondent and his wife on the one hand, and the District Director

of Internal Revenue of the United States of America on the other hand, that the amount of any income, excess profits or war profits taxes due under any return or returns made by or on behalf of your respondent and his wife for the taxable years ending December 31, 1948, December 31, 1949, December 31, 1950 and December 31, 1951 under existing acts or under prior revenue acts, may be assessed at any time on or before June 30, 1958, etc.

[fol. 65] Respondent avers and alleges that the income tax returns of your respondent and his wife for the taxable years December 31, 1948, December 31, 1949, December 31, 1950, December 31, 1951, December 31, 1952, December 31, 1953, December 31, 1954, December 31, 1955 and December 31, 1956 are now under investigation by the United States Treasury Department, Internal Revenue Service and other investigating officers of the United States Government and that the said income tax returns were filed by respondent and his wife on or about September 15th of the following calendar year.

IV

That the period of limitation of criminal prosecutions for offenses arising under the U.S. Internal Revenue laws (USCA 26-6531) is six years for offenses involving

a) The defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner

b) for the offense of wilfully attempting in any manner to evade or defeat any tax or the payment thereof;

c) for the offense of wilfully aiding or assisting in, etc. of a false or fraudulent income tax return, affidavit, claim or document

d) for the offense of wilfully failing to pay any tax or make any return at the time or times required by law

e) for the offense of perjury or making a false return (USCA 26-7206-7207)

f) For attempting to interfere with the administration of the internal revenue laws (USCA 26-Sec. 7212)

g) for offenses arising under Sec. 371 of title 18 of the U.S. Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

V

That should the agents of the said U.S. Treasury Department—Internal Revenue Service—or other officers of the U.S. Government having jurisdiction claim to have discovered during the investigation of the above listed income tax returns of defendant in rule a violation of any of the above listed U.S. Statutes, defendant in rule would be liable to indictment and prosecution before the United States District Courts for such offense or offenses.

[fol. 66]

VI

That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

VII

That publicity through dailey (sic) newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955 inclusive.

VIII

That eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three for income tax evasion and eight for perjury or false statements.

IX

That there has existed and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana and will hold future conferences with the said United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the laws of the United States of America and the State of Louisiana.

[fol. 67] X

Respondent, further answering respectfully avers that on advice of counsel, as an additional reason for refusing to answer any of the questions propounded to him before the said Grand Jury, respondent contended that he had the right to refuse to answer any such questions under Section 11 of Article I of the Constitution of the State of Louisiana which provides that no person can be compelled to give evidence against himself in a criminal case or in any proceeding which may subject him to a criminal prosecution despite the provisions of Section 13 of Article XIX of the Louisiana Constitution and the Louisiana Revised Statutes, Title 14, Section 121, in that the said Section 13 of Article XIX of the Louisiana Constitution and the Louisiana Revised Statutes, Title 14, Section 121 abridge and an attempt to abridge the constitutional privilege against self-incrimination granted respondent by Section 11 of Article I of the Louisiana Constitution, as such testimony might furnish leads to other testimony which could be used to convict respondent of offenses under the laws of the State of Louisiana.

XI

That the provisions of Section 468 of Title 15 of the Louisiana Revised Statutes mentioned by the District Attorney as granting your respondent immunity as a witness also abridges the rights, privileges and advantages granted respondent under Section 11 of Article I of the Louisiana Constitution in that the said Section 468 of Title 15 which provides that a person may be compelled to testify in any lawful proceeding against another charged with public bribery, etc., shall not be permitted to withhold his testimony upon the ground that it may incriminate or expose him to public infamy, merely provides that such testimony shall not afterwards be used against such person in any judicial proceeding, except for perjury in giving such testimony, likewise abridges the complete constitutional privilege against self-incrimination granted respondent by Section 11 of Article I of the Louisiana Constitution as under the said Section 15:468 of the Louisiana Revised Statutes [fol. 68] and under the said Section 13 of Article XIX of the Louisiana Constitution any facts disclosed by your respondent as such witness which would afford a link in a chain of evidence could, without the testimony of your respondent, be used against your respondent in a subsequent prosecution under the laws of the State of Louisiana.

XII

Your respondent avers that the immunity claimed to be given your respondent by the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, under Title 14, Section 121 of the Louisiana Revised Statutes, is no immunity at all, as the said section provides that the offender under the public bribery, bribery of voters or corrupt influencing articles who states the facts under oath to the District Attorney charged with the prosecution of the offense, and who gives evidence tending to convict any such offender under those articles, may, in the discretion of said District Attorney be granted full immunity from prosecution in respect to the offense reported except for perjury in giving such testimony.

Your respondent avers that he has never stated any facts under oath to the District Attorney regarding public bribery and has never given evidence tending to convict any other offender under the public bribery articles and that the said Section 14:121 provides first that the offender must state facts under oath to the District Attorney concerning the offense of public bribery and must give evidence tending to convict such offender under the public bribery articles on the trial of such offender and it is only then and under those circumstances that such offender who has stated the facts under oath and who has given evidence tending to convict the principal offender under the public bribery articles, may in the discretion of the District Attorney be granted full immunity from prosecution, except for perjury.

That the alleged promise of immunity disclosed in the record herein attempted to be given by the District Attorney to your respondent is not provided for by said R.S. 14:121 or any law of the State of Louisiana or by the Constitution of the State of Louisiana and under the said [fol. 69] provisions even if your respondent should have first stated facts under oath to the said District Attorney concerning the offense of public bribery and should actually appear in Court and testify against an offender charged with the public bribery articles, it would still be in the discretion of the District Attorney to determine whether or not he would grant your respondent full and complete immunity against any and all prosecutions for offenses against the laws of the State of Louisiana.

That the said District Attorney not having specifically informed your respondent that if your respondent would give evidence tending to convict any other offender under the public bribery articles, as provided for in said Section 14:121 of the Louisiana Revised Statutes, the said District Attorney would give your respondent full and complete immunity against future prosecutions, has not offered your respondent any legal immunity at all and the Rule for Contempt filed against your respondent should be rejected and dismissed as failing to state legal grounds for contempt provided for by law.

That the said attempted promise of immunity offered your respondent by the said Honorable Leon D. Hubert, Jr., District Attorney, is merely conditional and not conclusive and would not be binding on any successor to the said Honorable Leon D. Hubert, Jr. as District Attorney, who will vacate his office on the first Monday of May 1958, as it would then be within the sole discretion of his successor as District Attorney for the Parish of Orleans to determine whether or not your respondent should be given immunity against prosecutions under the laws of the State of Louisiana for any offense committed against the laws of the State of Louisiana.

XIII

That in order for a District Attorney to be able to give your respondent full and complete immunity against future prosecutions under the laws of the State of Louisiana, it would be necessary for the said Revised Statutes 14:121 and Revised Statutes 15:468 to contain a provision similar to that set out in Section 15 of Article XIX of the Louisiana Constitution which prohibits a member of the Legislature or public officers etc. from seeking, accepting or receiving, etc., a free pass and free transportation, free franking [fol. 70] privilege or discrimination in passenger, telephone or telegraph rates from any person or corporation to provide that no person or officer or agent of such corporation giving such free pass, etc. would not be liable to civil or criminal prosecution therefor, if he should testify to giving of the same.

Wherefore, for the reasons above set out, to be amplified in written brief filed on the hearing of this rule, respondent respectfully prays that the rule taken against him be dismissed and discharged and respondent relieved from liability and prosecution hereunder and that this answer be held sufficient to purge your defendant of contempt.

Respectfully submitted,

/s/ Eugene Stanley, Attorney for Respondent.

Duly sworn to by Osmond J. Litolff, jurat omitted in printing.

[fol. 71]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Osmond J. Litolff, a taxpayer (or taxpayers) of 2233 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1951, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ O. J. Litolff, Taxpayer.[1]

/s/ Mrs. O. J. Litolff, Taxpayer.[1]

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

[fol. 72]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 3, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Osmond J. Litolff, a taxpayer (or taxpayers) of 2233 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1950, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the

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Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ O. J. Litolff, Taxpayer.[1]

/s/ Mrs. O. J. Litolff, Taxpayer.[1]

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

[fol. 73]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Osmond J. Litolff, a taxpayer (or taxpayers) of 2233 St. Charles Ave., New Orleans, La.,

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1949, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ O. J. Litolff, Taxpayer.[1]

/s/ Mrs. O. J. Litolff, Taxpayer.[1]

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

[fol. 74]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Osmond J. Litolff, a taxpayer (or taxpayers) of 2233 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1948, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958,* except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ O. J. Litolff, Taxpayer.[1]

/s/ Mrs. O. J. Litolff, Taxpayer.[1]

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

[fol. 75]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Henry Mills, a taxpayer (or taxpayers) of 4817 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1948, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958,* except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the

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Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ Henry Mills, Taxpayer.[1]

/s/ Mrs. Henry Mills, Taxpayer.[1]

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

[fol. 76]

Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Henry Mills, a taxpayer (or taxpayers) of 4817 St. Charles Ave., New Orleans, La.,

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1949, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ Henry Mills, Taxpayer.[1]

/s/ Mrs. Henry Mills, Taxpayer.[1]

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

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[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

[fol. 77]
Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Henry Mills, a taxpayer (or taxpayers) of 4817 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1950, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ Henry Mills, Taxpayer.[1]

/s/ Mrs. Henry Mills, Taxpayer.[1]

---

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal

[Seal[2]]

Chester A. Usry, District Director of Internal Revenue, By /s/ Cecil M. Sanders, Group Supervisor.

May 13, 1957

[fol. 78]

Form 872 (Rev. Nov. 1956)
U. S. Treasury Department
Internal Revenue Service

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

May 8, 1957

In pursuance of the provisions of existing Internal Revenue Laws Mr. and Mrs. Henry Mills, a taxpayer (or taxpayers) of 4817 St. Charles Ave., New Orleans, La., and the District Director of Internal Revenue (or Assistant Regional Commissioner-Appellate) hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1951, under existing acts, or under prior revenue acts, may be assessed at any time on or before *June 30, 1958*, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before

---

Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter.

/s/ Henry Mills, Taxpayer.[1]

/s/ Mrs. Henry Mills, Taxpayer.[1]

[Seal[2]]

William G. Cullen, Assistant Regional Commissioner-Appellate, By /s/ William P. Blake, Associate Chief, Appellate Division.

6-4-57

---

[1] This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If a consent form is executed by a person acting in a fiduciary capacity, such as executor, administrator, or trustee, such person must submit Form 56, "Notice to the District Director of Internal Revenue of Fiduciary Relationship," together with certified copy of letters of administration, letters testamentary, trust instruments, or court certificate.

[2] If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

[fol. 79]

(Emblem)

U. S. Treasury Department
Internal Revenue Service
Regional Commissioner

Appellate Division
444 Federal Office Building
600 South Street
New Orleans 12, Louisiana

In Reply Refer to
ARC:AP:DAL
NO:JAH

Jun 4 1957

Mr. and Mrs. Henry Mills
4817 St. Charles Avenue
New Orleans, Louisiana

Income Tax—Year 1951

Dear Mr. and Mrs. Mills:

Receipt is acknowledged of the Consent extending to June 30, 1958, the period of limitation for assessment of income tax for the above year.

The Consent has been accepted by the Assistant Regional Commissioner-Appellate, and the triplicate copy is enclosed for your files. It is desired to assure you that it is the purpose of this office to proceed to a final determination of the tax liability as expeditiously as possible and your cooperation to that end will be appreciated.

Very truly yours,

/s/ William P. Blake, Associate Chief.

Enclosure

[fol. 80]

IN CRIMINAL DISTRICT COURT

SECTION "E"

No.

STATE OF LOUISIANA

v.

HENRY MILLS
OSMOND J. LITOLFF

MOTION FOR NEW TRIAL—Filed January 29, 1958

On motion of Henry J. Mills and Osmond J. Litolff, defendants in rule for contempt, and on respectfully suggesting to the Court that there is error to the prejudice of your defendants in the judgment finding them gulity (sic) of contempt of court, and that a new trial should be granted herein.

It is ordered that a new trial be granted herein.

New Orleans, Louisiana, January ....., 1958.

....., Judge.

Duly sworn to by Henry J. Mills and Osmond J. Litolff. jurat omitted in printing.

[fol. 82]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

SECTION "E"

STATE OF LOUISIANA

versus

HENRY MILLS

(and)

STATE OF LOUISIANA

versus

OSMOND J. LITOLFF

JUDGMENT ON RULE FOR CONTEMPT—
January 29, 1958

Henry Mills and Osmond J. Litolff, defendants in rules for contempt were cited for their refusal to answer questions propounded to them by the Grand Jury for the Parish of Orleans.

As cause for their refusal to answer these questions, defendants in rule stand upon three grounds:

One

A fear of Federal prosecution if compelled to answer these questions, it being alleged that they were under investigation by the United States Department of Internal Revenue, etc.

The questions propounded concerned protection payoffs to members of the New Orleans Police Department for the operation of lotteries within the Parish of Orleans.

Defendants contend that "if forced to answer any of the questions propounded * * * such answer might tend to incriminate respondents, or would afford a link in a chain of evidence which could become the basis of subsequent

prosecutions under the laws of the United States of America."

In support of their alleged right to refuse to answer these questions for the reasons hereinabove assigned, defendants rely upon the case of State vs. Dominguez, 82 So. 2d. 12, 228 La. 284.

At the time the Grand Jury for the Parish of Orleans sought to question Dominguez, he was under indictment in twelve counts by the federal grand jury for income tax violations. He was also then awaiting trial before the federal [fol. 83] District Court for the Eastern District of Louisiana.

In the instant case, the defendants Henry Mills and Osmond J. Litolff, at the time the Grand Jury for the Parish of Orleans sought to question them, were not under any charges in either the state or federal courts, nor or (sic) they presently under any charges.

In the case of State vs. Ford, et als., decided on January 9, 1958, and not yet reported, the defendants in rule, refused to answer questions of a similar nature propounded by the Grand Jury for the Parish of Orleans, on the grounds, "that they might incriminate themselves and feared prosecution under Federal Income Tax Laws and other federal laws. In the Ford case, defendants, as in the case at bar, alleged that they, together with other police officers, were under investigation for similar offenses.

In the Ford case the defendants sought to rely on the Dominguez case, as authority for their refusal to answer the questions propounded by the Grand Jury of the Parish of Orleans. This is also the position of the defendants in the case at bar.

In the Ford case the Supreme Court of Louisiana said:

> "The defendants were not indicted nor charges by the Federal authorities, while in the Dominguez case, supra, not only was the defendant charged, but there were twelve counts in one indictment against him and returned by the Grand Jury to the Federal District Court for the Eastern District of Louisiana."

• • • • • • •

"This important distinction illustrates the necessity of holding the Dominguez case to its own facts, and that is, *where the accused is actually under Federal indictment.*"

• • • • • • •

"The facts herein presented are not identical to those of the Dominguez case, supra. That prosecution is therefore, sui generis and not applicable to the instant matter."

From the foregoing, the Court holds the Ford case as controlling the issue herein, and not that of Dominguez.

[fol. 84] **Two**

The claim is made by defendants in rule that they were within their legal rights in refusing to answer the questions propounded to them by the Grand Jury for the reason that Section 11 of Article I of the Constitution of Louisiana provides:

"No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, *except as otherwise provided in this Constitution, etc.*"

Defendants in rule claim this protection despite the provisions of Section 13 of Art. 19 of the same Constitution. This Section reads as follows:

"Any person may be compelled to testify in any lawful proceeding against any one who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

This claim of protection under Section 11 of Art. I of the Constitution is also made despite the further provisions of L. S. A. 15:463 which reads as follows:

> "Any person may be compelled to testify in any lawful proceeding against another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing, and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or expose him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony."

In sum, defendants in rule contend, that the exceptions contained in Section 13 of Art. 19 of the Constitution, and L.S.A.-R.S. 15:468, in effect nullify the complete grant of immunity contained in Section 11 of Article I of the Constitution.

In arguing this point it is contended, that these exceptions, "would not prevent the State of Louisiana from using any facts learned from the lips of the respondent in order to ferret out and discover evidence, direct or circumstantial to be later used against respondents for a violation of the laws of the State of Louisiana.

[fol. 85] In other words it is argued that Section 13 of Art. 19 of the Constitution and L.S.A.-R. S. 15:468 fall short of granting the complete immunity intended by Sec. 11 of Art. I, in that, these pronouncements simply grant immunity from the later use of the testimony given, rather than immunity from prosecution for offenses which might be discovered from the testimony elictited (sic) by the questions of the grand jury.

In passing upon the relationship which Section 11 of Article I bears to Section 13 of Art. 19 of the Constitution, the Supreme Court in the case of State vs. Rodriguez, 82 So. 2d, 756, 219 La. 217, said:

> "The above is full and complete authority for the proposition that the State of Louisiana, or any other state, is not compelled to guarantee to its citizens immunity from self-incrimination. Louisiana has granted the immunity however, by incorporating into the constitution Article I, Section 11. This article, after providing that no person shall be compelled to give

evidence against himself in a criminal case or in any proceeding that may subject him to a criminal prosecution, then stipulates "except as otherwise provided in this Constitution. Article 19, Section 13, contains an exception to the above article."

"We must keep in mind that we are here dealing with two sections of our Constitution, which are of equal force and are not in conflict, and not with a provision of the Constitution granting the privilege against self-incrimination and an act of the Legislature seeking to take it away or making an exception thereto."

• • • • • • •

"We fully agree with the conclusions made by the trial judge in his return to the writ, in which he said: "The conclusion is inescapable that our State has the right to grant immunity to its citizens from being compelled to give testimony that will incriminate them, or to withhold that right, or give it under certain conditions or subject to certain exceptions. The people of this State have chosen to give it subject to the exception with which we are here concerned. We cannot adjudicate on the wiseness of their action. The provisions are plain, unambiguous and subject to effective enforcement."

A reading of the Rodriguez case discloses that the same contention raised by defendants in rule in that instant case was passed upon adverse to the position herein posed. In that case the Court said:

[fol. 86] "The trial judge in his return has fully answered relator's third contention, that he cannot be compelled to testify because Article 19, Section 13, does not afford relator complete immunity against prosecution for other but related crimes and amounts to no immunity at all. We think the judge is entirely correct in his view that complete immunity is not a right guaranteed to relator by any law for giving testimony pursuant to that section, and that the redactors of our Constitution were free to give complete

immunity, or to withhold it entirely, or to give a restricted immunity."

For the reasons hereinabove cited, and for the further reason that L.S.A.-R.S. 15:468, contains, substantially the same vertiage (sic) as that contained in Section 13 of Art. 19 of the Constitution, and, is not in conflict therewith, point 2 is without merit.

Three

In their third point it is asserted by defendants in rule, "That the District Attorney when questioning respondents before the Grand Jury informed them that he was offering them immunity authorized by Title 14, Section 12: of the Revised Statutes;"

"That Section R.S. 14:121 does not authorize the District Attorney to give an absolute full promise of immunity against future prosecutions to the witnesses whose testimony is sought to be compelled."

That "the offender under R.S. 12:121 must state facts under oath to the District Attorney charged with the prosecution of the offense and must give evidence in the future trial tending to convict another offender of bribery and then only, may the District Attorney in his discretion grant such a witness full immunity."

That "nowhere in the record is it shown that the District Attorney read Article 14:121 of the Revised Statutes to the witnesses (respondents) and nowhere is it shown that he informed respondents as to the exact nature of the Article and nowhere did he inform them that it would be incumbent on respondents to later testify before they would be entitled to receive full immunity;"

That "What the District Attorney was doing, in effect, was telling the witness to testify before the Grand Jury [fol. 87] and to later testify in court against the other offender who might be indicted to the same facts that the witness testified before the Grand Jury and then in his discretion, he, the District Attorney, would determine whether or not to give the witness immunity against future prosecution."

"That this is no promise of immunity at all and it was incumbent on the District Attorney to fully inform the witness that he would be given complete immunity against future prosecutions before the witness could be compelled to testify."

L.S.A.-R.S. 14:121 provides:

> "The offender, under the public bribery, bribery of voters or corrupt influencing articles, who states the facts under oath to the District Attorney charged with the prosecution of the offense, and who gives evidence tending to convict any other offender under those articles, may, in the discretion of such district attorney, be granted full immunity from prosecution in respect to the offense reported, except for perjury in giving such testimony."

L.S.A.-R.S. 15:17 provides in part as follows:

> "The District Attorney shall have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is district attorney and shall determine whom, when, and how he shall prosecute, etc."

The following appears under L.S.A.-R.S. 12:121 as a Reporter's Comment:

> "Const. 1921, Art. XIX, Sec. 13, and Art. 468 of the Louisiana Code of Criminal Procedure (R.S. 15:468) provide that in a bribery case a person cannot refuse to testify on the grounds that the testimony will incriminate him, but that such testimony cannot be afterwards used against the person in any judicial proceeding, except for perjury in giving such testimony. This section goes even further and empowers the District Attorney to grant complete immunity, except for perjury, to the person who reports the crime and testifies. Montana and Oklahoma have such providions which apply to public bribery. Mont. Rev. Codes Ann. (Anderson and McFarland, 1935), Sec. 10,863; Okla. Stats. Ann. (1937) Tit. 21, Sec. 391.

Louisiana formerly had similar providions which applied only to commercial bribery. Acts. 120, No. 108, Sec. 7 and unlawful free passes, etc. to legislators. Const. 1921, Art. XIX, Sec. 15. The granting of complete immunity to the informer is necessary for proper enforcement of this section. Convictions in such cases will rarely be secured unless one party testifies against the other."

The transcript of the proceedings before the Grand Jury shows that defendants were advised substantially as follows:

[fol. 88] That under the law of Louisiana and particularly Title 14, Section 12, the District Attorney may offer full immunity from prosecution any witness who states facts under oath with reference to his own participation in any offense of public bribery; that in addition thereto, Section 468 of Title 15, and the Constitution of Louisiana provides that any person who is called upon to give testimony in a proceeding concerning public bribery cannot withhold the giving of said testimony, and that this testimony cannot be used against him except for perjury; that as a result of these laws, the witness must testify unless he is under charges in the Federal Court; that as District Attorney, the witness was offered immunity consistent with the laws heretofore referred to.

Despite the offer of immunity heretofore tendered, defendants refused to answer any questions relying on the advise (sic) of their attorney. In each instance a written refusal to testify and the reasons therefor was made part of the record of these proceedings.

The transcript of the proceedings before the Grand Jury satisfies the Court, that defendants fully understood that they had been offered full and complete immunity by the District Attorney.

Defendants contend that the discretion referred to in L.S.A.-R.S. 14:121 is absolute, and, in effect, not subject to review by the Courts. It is postulated that defendants would have had to testify before the Grand Jury, and again upon the trial of an offender, and then, and only then, would he be certain of full and complete immunity.

Obviously, if a defendant after testifying before the grant (sic) jury refused to testify upon the trial, or repudiated his testimony given before the Grand Jury, he would not be entitled to immunity from prosecution. However, if having been promised full and complete immunity before testifying before the Grand Jury, and having testified before the Grand Jury as well as upon the trial, the Courts would enforce the bargain made with the state's representative. The discretion referred to in L.S.A.-R.S. [fol. 89] 14:121 simply means that the District Attorney is not compelled to grant immunity in each and every case in which a bribe giver or taker seeks sanctuary from prosecution by the alacrity with which he reaches the office of the District Attorney. L.S.A.-R.S. 14:121, is simply a complement to Sec. 13, of Art. 19 of the Constitution and L.S.A.-R.S. 15:468, in rounding out a complete modus operandi for prosecution and conviction of those engaged in the crime of bribery.

For the reasons hereinabove recited, the Court is of the opinion that the defendants in rule, Henry Mills and Osmond J. Litolff, should answer the questions propounded by the Grand Jury as set out in the rules for contempt herein filed.

It is therefore ordered that defendants in rule forthwith repair to the room of the Grand Jury, and there answer the questions propounded of them by the Grand Jury or in failing so to do, suffer the penalties provided by law.

New Orleans, Louisiana, 29th day of January, 1958.

/s/ ....., Judge.

[fol. 90]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

SECTION "E"

State of Louisiana
Parish of Orleans

IN RE
GRAND JURY

At the hour of 3:15 P. M., the Grand Jury of the State of Louisiana, duly empaneiled and sworn in and for the body of the Parish of Orleans, came into open court, attended by Leon D. Hubert, District Attorney for the Parish of Orleans, there being then and there Eleven (11) of their number and a quorum as follows: James J. Reiss, Foreman, Malcolm P. Lambour, Sr., Alfred W. Helmke, Raymond E. Gourgues, Arnold S. Kirschhoff, Leonard V. Huber, Dudley T. Odom, Sidney St. John Eshleman, Harry J. Neelis and Joseph Lee Dalferes, Jr., and Bernard J. Schott (Ashton W. Jund, Sr. being absent) and the said Grand Jury through their Foreman, presented to the court rules to show cause why one August J. Mills, Sr., one Henry Mills and one Osmond Litoiff should not be adjudged guilty of contempt of the authority of the Orleans Parish Grand Jury for the State of Louisiana and the Criminal District Court for the Parish of Orleans and be punished in accordance with law. The court received the rules and ordered the same filed. August J. Mills, Sr., was not present in court, but was represented by D. A. Neuhauser, Esq., who stated to the court that the said August J. Mills, Sr., was ill and in Baptist Hospital. Henry Mills and Osmond Litolff appeared at the bar of the court, attended by their counsel, Eugene Stanley, Esq. Mr. Stanley waived the reading of the rules as to Henry Mills and Osmond Litolff. Mr. Neuhauser waived the reading of the rule as to August J. Mills, Sr. Whereupon, the court ordered that the rules be set for hearing on Monday, January 27th, 1958 at 10:00 A. M. Mr. Hubert representing the Grand Jury, Mr. Stanley representing Henry Mills and

Osmond Litolff and Mr. Neuhauser representing August J. Mills, Sr., announced that they would be ready on said date. The court further ordered August J. Mills, Sr., Henry Mills and Osmond Litolff served with a copy of said rules. Whereupon, the court ordered August J. Mills, Sr., [fol. 91] Henry Mills and Osmond Litolff discharged to Monday, January 27th, 1958 at 10:00 A. M.

I certify that the foregoing is a true and correct copy of a minute entry in the minutes of the Criminal District Court for the Parish of Orleans, Section "E", on January 22, 1958.

/s/ E. A. Mauras, Minute Clerk, Section "E" Criminal District Court, Parish of Orleans.

[fol. 92]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

SECTION "E"

State of Louisiana
Parish of Orleans

IN THE MATTER OF THE GRAND JURY PROCEEDINGS REGARDING HENRY MILLS, OSMOND LITOLFF AND AUGUST J. MILLS, SR.

This matter came up this day for hearing on the rule to show cause why the said Henry Mills, Osmond Litolff and August J. Mills, Sr., should not be adjudged guilty of contempt of the authority of the Grand Jury for the Parish of Orleans. Present: Henry Mills and Osmond Litolff, represented by Eugene Stanley, Esq., and Leon D. Hubert, Jr., District Attorney for the Parish of Orleans. August J. Mills, Sr., was not present in court, but was represented by D. A. Neuhauser, Esq. Mr. Stanley filed of record a stipulation of facts entered into by himself and Mr. Hubert and signed by both, relative to Henry Mills. The court ordered the stipulation filed. Attached to the said stipulation was a copy of the above rule to show cause, together with a copy of the proceedings of the

Orleans Parish Grand Jury dated Wednesday, January 22, 1958 and a copy of a statement made by Henry Mills to the said Grand Jury, dated January 22, 1958. Mr. Stanley also filed of record a stipulation of facts relative to Osmond Litolff, attached to which was a copy of the rule to show cause as above, together with a copy of the proceedings of the Orleans Parish Grand Jury, dated Wednesday, January 22, 1958 and a copy of a statement made by Osmond Litolff to the said Grand Jury, dated January 22, 1958. All of the above documents were read to the court by Mr. Stanley, after which the court ordered the same filed. Whereupon, Mr. Stanley presented to the court an answer to the above rule to show cause, on behalf of Henry Mills, together with copies of waivers against prescription concerning respondent's income tax returns for the years 1948 to 1951 inclusive, and a memorandum of authorities on behalf of Henry Mills and Osmond Litolff, in support of the [fol. 93] above rules for contempt. Mr. Stanley asked that he be allowed to file similar documents relative to Osmond Litolff. It was so ordered by the court. Mr. Stanley then argued on behalf of Henry Mills and Osmond Litolff. Mr. Hubert argued for the state. Both matters were submitted. The court took the matters under advisement to Wednesday, January 29, 1958 and ordered Henry Mills and Osmond Litolff discharged until Wednesday, January 29, 1958.

I certify that the foregoing is a true and correct copy of a minute entry in the minutes of the Criminal District Court for the Parish of Orleans, Section "E", on January 27, 1958.

/s/ E. A. Mauras, Minute Clerk, Section "E" Criminal District Court, Parish of Orleans.

[fol. 94]

IN CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

SECTION "E"

State of Louisiana
Parish of Orleans

IN THE MATTER OF THE GRAND JURY PROCEEDINGS
REGARDING HENRY MILLS AND OSMOND LITOLFF

This matter came up this day for final decision by the Court, on the rule to show cause why the defendants, Henry Mills and Osmond Litolff, should not be held in contempt of the Grand Jury of the Parish of Orleans and the Criminal District Court for the Parish of Orleans. Present: Henry Mills and Osmond Litolff, attended by their counsel, Eugene Stanley, Esq.; Leon D. Hubert, Jr., District Attorney for the Parish of Orleans. The following named members of the Grand Jury for the Parish of Orleans were also present in court: James J. Reiss, Foreman, Malcolm P. Lambour, Sr., Bernard J. Schott, Alfred M. Helmke, Raymond E. Gourgues, Arnold S. Kirschhoff, Leonard V. Huber, Dudley T. Odom, Harry J. Neelis and Joseph Lee Dalferes, Jr., (Ashton W. Jung, Sr. and Sidney St. John Eshleman being absent). Whereupon, the court in a written opinion rendered the following judgment:

• • • "For the reasons hereinabove recited, the Court is of the opinion that the defendants in rule, Henry Mills and Osmond J. Litolff, should answer the questions propounded by the Grand Jury as set out in the rules for contempt herein filed.

IT IS therefore ordered that defendants in rule forthwith repair to the room of the Grand Jury, and there answer the questions propounded of them by the Grand Jury or in failing so to do, suffer the penalties provided by law." Mr. Stanley objected to the ruling of the court and reserved a bill of exceptions, as noted by the stenographer. [fol. 95] Mr. Stanley then presented to the court a motion for a new trial, which the court ordered filed. The court

overruled the motion. Mr. Stanley reserved a bill of exceptions, as noted by the stenographer. Mr. Stanley then informed the court that the defendants in rule, Henry Mills and Osmond J. Litolff would not answer the questions so propounded of them by the Grand Jury. Whereupon, the Court made the following statement: "The defendants in rule, Henry Mills and Osmond J. Lotolff, (sic) having informed the court that they would not answer the questions so propounded of them by the Grand Jury, the Court finds the said defendants in rule guilty of contempt, and, in consequence thereof, the rules herein filed are made absolute, and, the said Henry Mills and the said Osmond J. Litolff are now sentenced to pay a fine of One Hundred ($100.00) Dollars and to serve ten (10) days in the Parish Prison and in default of the payment of said fine, to serve ten (10) days additional in said Parish Prison. Mr. Stanley then presented to the court, written notice of intention of defendants to apply for writs to the Supreme Court of Louisiana. The court ordered same filed and further stated: "The defendants in rule having served notice upon the Court of their intention to apply to the Supreme Court of Louisiana for writs, pending notice from the Supreme Court of the filing of said application the defendants in rule are discharged until February 6, 1958 at 10:30 A. M. Should the court be notified that defendants in rule have applied for writs the court will continue the execution of the contempt sentence until such time as the court is notified that the writs have been either granted or denied. On motion of Mr. Hubert, the Grand Jury were discharged and ordered to their quarters for deliberation.

I certify that the foregoing is a true and correct copy of a minute entry in the minutes of the Criminal District Court for the Parish of Orleans, Section "E", on January 28, 1958.

/s/ E. A. Mauras, Minute Clerk, Section "E" Criminal District Court, Parish of Orleans.

[fol. 96] And your defendants, Henry J. Mills and Osmond J. Litolff, through counsel, having submitted this their Bill of Exceptions to the District Attorney, now tender same to the Court and pray that the same be signed and sealed by the Judge of this Court pursuant to the statute as such case made and provided which is done accordingly this 3rd day of February 1958.

/s/ J. Bernard Cocke, Judge.

[fol. 97]

IN SUPREME COURT OF LOUISIANA
NEW ORLEANS

By McCaleb, J.:

No. 43,939

STATE OF LOUISIANA

v.

HENRY J. MILLS

and

STATE OF LOUISIANA

v.

OSMOND J. LITOLFF

ORDER DENYING PETITION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION—March 3, 1958

In re: Henry J. Mills and Osmond J. Litolff applying for writs of certiorari, mandamus and prohibition

Writs refused.

We find no error of law in the ruling complained of.

/s/ EHMcC, /s/ ALP, /s/ JBH, /s/ FWH, /s/ HAM.

I respectfully dissent.

/s/ JDS.

[fol. 98]

IN SUPREME COURT OF LOUISIANA

[Title omitted]

In re: Henry J. Mills and Osmond J. Litoff (sic) applying for Writs of Certiorari, Mandamus and Prohibition

MOTION FOR STAY OF EXECUTION

To the Honorable the Chief Justice and Honorables the Associate Justices of the Supreme Court of the State of Louisiana

The petition of Henry J. Mills and the petition of Osmond J. Litoff, (sic) defendants in the above entitled and numbered cause, and applicants for writs of certiorari, mandamus and prohibition herein, with respect, shows

1.

That the judgment and decree of this Honorable Court, dated March 3, 1958, refusing and denying petitioners' application for writs of certiorari, mandamus and prohibition is a final judgment and that under the rules of this Honorable Court, no application for a rehearing will be considered,

[fol. 99]

2.

Your petitioners aver that the said opinion and decree of this Honorable Court refusing to grant petitioners the writs of certiorari, mandamus and prohibition applied for herein to review the judgment of Hon. J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans, State of Louisiana, dated January 29, 1958, finding your petitioners guilty of contempt of Court and sentencing your petitioners to pay a fine of $100.00 and to serve ten days in the Parish prison of the City of New Orleans, and to serve ten days additional in default of the payment of the said fine is erroneous and contrary to law and deprives petitioners of rights, privileges and immunities granted petitioners by the Constitution and laws

of the State of Louisiana, to-wit: Section 11 of Article I of the Constitution of the State of Louisiana and the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

3.

That petitioners have been tried, convicted and sentenced over their protest, timely raised, without due process of law, for the reasons set forth in Paragraph 2 hereof.

4.

Petitioners aver that they timely raised the said questions in the lower Court, both before and during the trial had in the lower Court, and also at the time of their conviction, and in a motion for a new trial and also in the application for writs filed in this Honorable Court.

5.

Petitioners aver that they are desirous of applying to the Supreme Court of the United States of America for a writ of certiorari and review, and/or appeal to review the decision of this Honorable Court upon the issues timely and properly raised herein and as shown by the record and decree of this Honorable Court and that the decree and mandate of this Honorable Court should be stayed or recalled, so that petitioners will have an opportunity to [fol. 100] present their application to the Supreme Court of the United States of America for relief.

Wherefore, petitioners pray that after due consideration, that this Honorable Court grant petitioners a reasonable stay of execution and will recall any process, order or execution, if same has been issued, and that petitioners be permitted a delay of ninety days within which to prepare and file in the Supreme Court of the United States of America their application for a writ of certiorari or appeal to review the decision of this Honorable Court, refusing to grant your petitioners the writs of certiorari, mandamus and prohibition applied for herein and that the mandate

and decree of this Honorable Court be recalled and stayed and withheld, accordingly.

And your petitioners further pray for all such further orders and such further general and equitable relief to which your petitioners are, or may be hereinafter entitled.

/s/ Eugene Stanley, Attorney for Petitioners.

Duly sworn to by Eugene Stanley, jurat omitted in printing.

[fol. 101]

IN SUPREME COURT OF LOUISIANA

ORDER GRANTING STAY OF EXECUTION—
March 4, 1958

In view of the foregoing petition and in accordance therewith,

Let a stay of execution issue for a period of ninety days, upon petitioners, Henry J. Mills and Osmond J. Litoff, (sic) furnishing bond with good and solvent security, in the sum of two hundred ($200.00) dollars, conditioned according to law, and further conditioned that if the said Henry J. Mills and the said Osmond J. Litoff (sic) fail to make application for such writ within the period allotted therefor, or fail to obtain an order granting their application of (sic) fail to make their plea good in the Supreme Court of the United States, each shall answer for all damages and costs which the other party may sustain by reason of the stay.

New Orleans, Louisiana, March 4, 1958.

/s/ Jno B. Fournet, Chief Justice, Supreme Court of Louisiana.

[fol. 104] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 105]

SUPREME COURT OF THE UNITED STATES

No. 74, October Term, 1958

[Title omitted]

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with No. 75 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 75

AUGUST J. MILLS, SR., PETITIONER,

vs.

STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED MAY 29, 1958
CERTIORARI GRANTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 75

AUGUST J. MILLS, SR., PETITIONER,

vs.

STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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[fol. 1]

IN THE SUPREME COURT OF LOUISIANA

No. 43-972

STATE OF LOUISIANA

v.

AUGUST J. MILLS, SR.

APPLICATION FOR CERTIORARI, MANDAMUS AND PROHIBITION—
Filed Feb. 25, 1958

To the Honorable the Chief Justice and the Associated Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana, on the relation of August J. Mills, Sr., defendant in an unnumbered and undocketted (sic) matter in the Criminal District Court for the Parish of Orleans, State of Louisiana, before Section "E" thereof, having to do with a Motion filed by the Grand Jury for the Parish of Orleans seeking to have defendant adjudged in contempt for declining to answer certain questions propounded to him, with respect shows, that:

1. On January 15, 1958 relator was subpoenaed as a witness to appear before the Grand Jury for the Parish of Orleans and an attempt was then made by the District Attorney for the Parish of Orleans and one of his assistants to interrogate relator regarding the current political and public bribery and income tax investigation of members of the New Orleans Police Department, and others, and relator declined to answer certain questions, claiming his constitutional rights, Federal and State, against self-incrimination and civil rights constitutionally guaranteed, all as will more fully appear later;

2. As is shown on pages 3, 4 and 5 of the agreed Stipulation of Facts, attached hereto and made part hereof, (marked "A"), relator, "in language that propounder of

question" should "reasonably be expected to understand as an attempt to invoke privilege" (*Emspak* v. *U.S.*, 75 S. Ct. 687), declined to answer certain questions through fear of Federal and State prosecutions for offenses that might be disclosed and civil suits that might be suggested by the answers; (page 2, Memorandum of Authorities, attached and made part hereof, marked "B").

3. On January 22, 1958 (page 1—Stipulation of Facts), the Grand Jury for the Parish of Orleans, State of Louisiana, filed a motion seeking to have relator adjudged in [fol. 2] contempt for declining to answer certain questions set forth in Exhibit A (pp. 3-6, Stipulation of Facts) attached to said motion;

4. On January 27, 1958, relator filed a motion for a continuance based on the fact that he was hospitalized and the matter was continued to February 10, 1958 at 10 o'clock A.M.; (p. 7 Stipulation of Facts);

5. On February 10, 1958, relator filed an answer (copy attached and made part hereof, marked "C"), to the motion and rule for contempt in which he averred, among other things, that

(a) Being complelled (sic) to answer the questions under the circumstances and surroundings and facts existing at the time they were propounded would be an abridgement and denial of his constitutional rights under Amendments V, IX and XIV of the Constitution of the United States, and Sections 2, 11 and 15 of Article I of the Constitution of Louisiana; (Answer, Para. 1)

(b) Relator and his wife had been and are under investigation by the United States Revenue Service and others; had been required to sign waivers of prescription; (Answer, para. 2, 3 & 4; p. 7, Stipulation of Facts) and, at the time of the questions, eleven indictments had been returned by the United States Grand Jury against members of the New Orleans Police Department, three for income tax evasion and eight for perjury or false statements; (Answer, para. 7, p. 7, Stipulation of Facts);

(c) At the time of the Grand Jury interrogation, relator had not stated any facts under oath to the District Attorney or any of his assistants concerning the public bribery, bribery of voters or corrupt influencing articles and statutes, *nor was he an "offender" under said articles and statutes*, (p. 8, Stipulation of Facts; Answer, para. 9 & 15) and was not subject to the exception noted in L.S.A. R.S. 14:121;

[fol. 3] (d) At the time of interrogation, no one had been "charged for having committed the offense of bribery" nor was the Grand Jury investigation a proceeding "against another charged with committing the offense of bribery, public bribery, bribery of voters or corrupt influencing" and relator, consequently, was not within the exceptions noted in Article XIX, Sec. 13, Constitution of Louisiana, and in L.S.A. R.S. 15:468; (Answer, para. 9), (See pp. 2-6 Memorandum of Authorities, attached),

(e) The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else, and is purely conditional not being binding on any successor (Answer, para. 11 and 13) and, consequently, if relator were forced to answer the questions declined, and those that would inevitably follow, it would be a violation of the provisions of the Constitution of the United States, particularly Section 1 of Amendment XIV thereof; (Answer, para. 14; see pp. 5 and 6 of Memorandum of Authorities, attached),

(f) The cooperation existing between the District Attorney for the Parish of Orleans, the Police Bureau of Investigation, the United States Attorney for the Eastern District of Louisiana, the Internal Revenue Service of the United States and its investigators, (p. 8, Stipulation of Facts) as attested by the eleven Federal indictments noted in Section (b) of paragraph 5 hereof, the sixty odd criminal cases (not bribery) filed in the Criminal District Court for the Parish of Orleans against individuals allegedly

engaged in business similar to that insinuated to relator, (Answer, para. 10; p. 8, Stipulation of Facts), the seven suits for occupational licenses, for [fol. 4] business similar to that insinuated to relator, each for well over a thousand dollars, on file in the Civil District Court for the Parish of Orleans, (Answer, para. 12; p. 8, Stipulation of Facts), and the insinuating tenor of some of the questions propounded with reference to relator's son and brother (pp. 3 and 4, Stipulation of Facts) were *facts and circumstances* ample to cause relator to fear that any answer to the questions propounded and others that would inevitably follow might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings, criminal and civil, against him under the laws of the United States and the State of Louisiana for matters unrelated to bribery and for which there existed no immunity statutes, and ample cause for him to declare that forced answers would be an abridgement of his constitutional rights under Amendments V, IX, XIV of the Constitution of the United States, and Sections 2, 11 and 15 of Article I of the Constitution of Louisiana; (with reference to the Unenumerated Rights guaranteed by Amendment XIX U. S. Const. and Art. I, Sec. 15, La. Const. see pp. 8-11, Memorandum of Authorities, attached);

(g) Any doubt herein should be resolved in favor of relator (*Quinn* v. *U.S.* 75 S. Ct. 668, *Hoffman* v. *U. S.* 341 U. S. 479) or the very purpose of the privilege would be frustrated; (32 L.R.A. 133),

(h) And praying that the rule be dismissed;

6. On February 10, 1958, an agreed Stipulation of Facts, signed by John P. Nelson, Jr., Assistant District Attorney, and David A. Neuhauser and Milo B. Williams, attorneys for relator, was filed, (Marked "A");

7. On February 10, 1958, the matter was argued before Judge J. Bernard Cocke, a Memorandum of Authorities

(Marked "B") was filed by relator's counsel, and the matter taken under advisement;

[fol. 5] 8. On February 19, 1958, Judge J. Bernard Cocke rendered a judgment (a copy is attached, made part hereof and marked "D") ordering relator to answer the questions propounded by the Grand Jury, to which Bill of Exception No. 1 (attached, made part hereof, and marked "E") was seasonably reserved; whereupon relator again declined to answer the questions for the aforesaid reasons, was adjudged in contempt, filed a Motion for a New Trial (attached, made part hereof, and marked "F") which was overruled and Bill of Exception No. 2 seasonably reserved (attached, made part hereof and marked "G");

9. Relator was then sentenced to serve ten (10) days in the Parish Prison, pay a fine of $100.00, and in default thereof serve an additional ten (10) days; whereupon relator filed Notice of Intention to Apply For Writs (attached, made part hereof and marked "H");

10. On February 12, 1958, one week prior to the sentencing of relator, the Grand Jury for the Parish of Orleans found an indictment against relator for conspiring with others "to commit the crime of Public Bribery" (R.S. 14:26-118) which indictment was filed with the Criminal District Court for the Parish of Orleans, under No. 159-238 and a certified copy of which is attached hereto and made part hereof and marked "I";

11. Relator avers that the question of contempt was a moot one at the time he was ordered to answer the questions for the following reasons:

(a) Had relator acceded to the order to answer the questions, he would obviously have been testifying against himself, since he was already under indictment;

(b) The proffered immunity would have been worthless as relator was already under indictment; and,

(c) His answers, whatever they might have been, would have been surplusage as the indictment for conspiracy to commit public bribery had already been found;

12. Relator avers that:

> "Certiorari would be granted to determine whether defendant was being deprived of his liberty without [fol. 6] due process in being punished for his refusal to give allegedly self-incriminating testimony even though there was in effect an immunity statute."
>
> *Regan* v. *People*, 75 S. Ct. 585

13. The *Rodriguez*, 219 La. 217, *Ford*, 99 So. 2d 320, and *Dominguez*, 82 So. 2d 12 cases are not applicable herein as they considered immunity only under the bribery statutes whereas relator poses herein the proposition that, although granted immunity under the bribery statutes, his answers could and very likely would be used as a basis for charges and/or civil suits, totally unrelated to bribery, under Federal and State Laws, all in violation of the constitutional rights and privileges (United States and Louisiana) which he has cited herein.

14. In the interest of brevity relator has not cited all of the authorities herein, and respectfully refers the Court to the Memorandum of Authorities, attached hereto and made part hereof, wherein the subject is covered in detail, and asks that particular note be made to the citation on page 3 thereof reading:

> "It is when privilege of self-incrimination is *under attack* by those who *wrongly conceive* of it as merely *a shield for the guilty* that *governmental bodies must be most scrupulous in protecting its exercise.*" (Italics ours.)
>
> *Quinn* v. *U. S.* 75 S. Ct. 668-669.

Wherefore, petitioner prays that writs of certiorari should issue herein from this Honorable Court, according to law directing the Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans, State of Louisiana in the matter of State of Louisiana v. August J. Mills, Sr., proceedings for contempt, directing and ordering the said Judge to send up to this Honorable Court the records of the said case and that this

Honorable Court do issue this order prohibiting and forbidding the said Honorable J. Bernard Cocke, Judge aforesaid, from attempting to execute his judgment finding your [fol. 7] petitioner guilty of contempt of Court and sentencing your petitioner to pay a fine of $100.00 and serve ten days in the Parish Prison and in default of the payment of the said fine to serve ten days additional in the said Parish Prison.

Petitioner further prays that the said Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans, State of Louisiana, be ordered to show cause if any he has or can, on a day and hour to be fixed by this Honorable Court, why the writ of prohibition applied for herein should not be made perpetual and why the said Judge should not be ordered to discharge your petitioner from these contempt proceedings and to hold that petitioner was entitled to claim the constitutional privileges granted him by the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States of America.

In the alternative, petitioner prays that this Honorable Court, under its supervisory powers do itself set aside the judgment of the lower court finding your petitioner guilty of contempt and dismiss and discharge your petitioner from the said contempt proceedings and do itself recognize the right of your petitioner to claim his constitutional privileges against self-incrimination under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States of America, and do itself annul and set aside the sentence imposed by the said Honorable J. Bernard Cocke, Judge aforesaid, on your petitioner, August J. Mills, Sr., as above set out.

That written notice of the intention of your petitioner to apply to this Honorable Court for writs of certiorari, prohibition and mandamus was given by your petitioner to the said Honorable J. Bernard Cocke, Judge aforesaid, and the said Honorable Leon D. Hubert, Jr., District Attorney, as will more fully appear by reference to copies of said notices attached hereto and made part hereof.

That as will more fully appear in the affidavit attached hereto and made part hereof, copies of this application for writs of certiorari, mandamus and prohibition for and on

behalf of your petitioner were sent by mail to Honorable [fol. 8] J. Bernard Cocke, Judge aforesaid and Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans.

And petitioner further prays for all general and equitable relief, etc.

/s/ David A. Neuhauser, /s/ Milo B. Williams, /s/ David A. Neuhauser & /s/ Milo B. Williams, Attorneys for Relator, 906 Carandelet Bldg., Ja. 5 8717.

Duly sworn to by Milo B. Williams, jurat omitted in printing.

[fol. 9]

Exhibit "A" to Application

STIPULATION OF FACTS

It is agreed by and between Honorable Leon D. Hubert, District Attorney for the Parish of Orleans, on behalf of the State of Louisiana, and David A. Neuhauser and Milo B. Williams, Attorneys for August J. Mills, Sr., defendant in rule, that the following agreement and stipulation as to facts is hereby entered into by and between Counsel and shall be considered as evidence herein in lieu of the taking of testimony on the hearing of this rule.

1. That the following is a true, correct and genuine copy of the Rule filed herein by the Grand Jury for the Parish of Orleans, State of Louisiana, appearing through its foreman, Honorable James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, service of which was made (and accepted) by the said August J. Mills, Sr., defendant in rule, and that the copy of the transcript of the proceedings attached to the said rule is a true, correct and genuine copy of the proceedings had before the said Grand Jury on Wednesday, January 15th, 1958, when the said August J. Mills, Sr., had been duly and legally summoned as a witness before the said Grand Jury, all as reported by Mr. Leonard J. Bossier, Jr., official stenographer, and duly certified as true and correct by him:

ORLEANS PARISH
GRAND JURY

PARISH OF ORLEANS
STATE OF LOUISIANA

IN RE: AUGUST J. MILLS, SR.

MOTION

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its foreman, James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 15, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana.

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery, August J. Mills, Sr., having been supoenaed, was called and sworn as a witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of [fol. 10] his rights and obligations under the law and after having been given immunity by the District Attorney under the provisions of R.S. 14:121, when asked the questions contained in the attached Exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and replies being as contained in the said exhibit.

WHEREFORE, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said August J. Mills, Sr., to show cause on the 27th day of January, 1958 at 10:00 A. M. why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal District Court for the Parish of Orleans.

S/ James J. Reiss
Foreman, Grand Jury for the
Parish of Orleans

New Orleans, Louisiana
January 22nd, 1958.

ORDER

Considering the foregoing Motion it is ordered that August J. Mills, Sr., show cause on the 27th day of January, 1958, at 10:00 A.M., O'clock, why he should not be adjudged in contempt of the Grand Jury for the Parish or Orleans and of the Criminal District Court for the Parish of Orleans.

S/ J. Bernard Cocke, Judge
Criminal District Court
Parish of Orleans

A true copy

E. A. Mouras
Minute Clerk

[fol. 11]

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY ON WEDNESDAY, JANUARY 15, 1958

* * * * * * *

PRESENT:

Mr. Leon D. Hubert, Jr., District Attorney.
Mr. John Nelson, Jr., Assistant District Attorney.
Members of the Grand Jury.

* * * * * * *

AUGUST J. MILLS, SR., Mandeville, Louisiana, a witness called by the Orleans Parish Grand Jury, and after having been first duly sworn by the Foreman, testified as follows:

Examination by Mr. Nelson:

Q. You are presently employed, Mr. Mills?

A. No.

Q. Do you live here in New Orleans sometimes?

A. Well, sometimes. I have an apartment here. When I come to the City I stay in it.

Q. Are you under a doctor's care now?

A. I am trying to be. I am trying to go to the hospital. They might send me there. The doctor over the Lake told me he couldn't do anything. I have to go to Dr. Willoughby for—might be the glands, you see, because I have a swollen

gland here and it may be muscles. He don't know. So he told me to go to Dr. Willoughby. That's up on Magnolia, up by the Baptist Hospital.

Q. Mr. Mills, as you already know, this jury is inquiring into the lottery operation from 1950 to 1955 and that is what we would like to talk to you about. What was your employment from 1950 to 1955, sir?

A. I refuse to answer that question on my Constitutional Rights, both Federal and State.

Q. Mr. Mills, you have lived a full life?

A. Pardon?

Q. A full life?

A. Yes, sir, I have lived a full life.

Q. And you have reared a boy we met this morning that looks like he is very intelligent. Why don't you try to help us clear up this mess, Mr. Mills?

A. I can't help you clear up no mess.

[fol. 12] Q. You could.

A. Can't do it.

Q. This thing could be brought to an end tonight. I would like to talk to you as a friend rather than a prosecutor and I wish I had an opportunity to talk to you in a barroom somewhere rather than here. Is your reason for not lending assistance due to the fact that you don't trust the people that are in the thing?

A. I am going to refuse to answer that question, too.

Q. Mr. Mills, you understand the seriousness of this thing and how it could effect particularly your son, do you not?

A. I don't know. I am in no position to answer any questions. I don't understand a lot of this stuff and I am going to stand on my Constitutional Rights on anything like that.

By the Foreman:

Q. Mr. Mills, is it you or Henry that has the Pan American Liquor Company?

A. That's Henry. I was in it but I sold out.

Q. It's quite a sizeable business?

A. I sold out and retired.

By Mr. Hubert:

Q. Mr. Mills, under the law, and particularly Section 121 of Title 14, District Attorney is authorized to give immunity to any witness in so far as his own conduct in any matter of public bribery is concerned, and that is a full immunity from prosecution as to any participation he may have had in any matter of public bribery. In addition to that both the law, specifically Section 468 of Title 15, provides that a witness who does give testimony concerning his operations in a public bribery matter that that testimony can never be used against him. So you have a full protection for yourself with reference to your testimony as to your participation in any public bribery. Now, are you under any Federal charges right now?

A. No, I am not.

[fol. 13] Q. Are you under any State charges?

A. No, I am not.

Q. Well, I give you the immunity I spole to you about and that being the case, of course, you are required to answer the questions.

By Mr. Nelson:

Q. You understand what that means, Mr. Mills?

A. I do.

Q. Would you care to discuss it with an attorney, sir?

A. Well, no, I don't see why I should discuss it with an attorney now. This is something I don't know anything about, like a civil suit or something like that.

Q. There's no civil suit.

A. But there could be allowed a civil suit on something you couldn't prove or something like that. I am kind of mixed up on this thing. I got to watch myself closely.

Q. I understand. But you do understand what immunity means, do you not?

A. I know it. I understand what immunity means.

Q. Mr. Mills, did you between 1950 and 1955, have any interest in the lottery companies?

A. You mean own a lottery company?

Q. Yes, sir.

A. I never owned a lottery company in my life.

Q. You were working for a lottery company, were you not, sir?

A. I am going to refuse to answer that question on my Constitutional Rights.

Q. All right. Mr. Mills, have you ever been in the G & G Bar?

A. Yes, sir, I have.

Q. Very often?

A. Well, lots of times I go there.

Q. Between 1950 and 1955, did you go to the G & G Bar very regularly?

A. Well, I went there quite a few times, yes sir.

Q. When you went there, did you ever see any other lottery owners there at the same time that you went there?

A. I am going to refuse to answer that question, too. I don't know what's going on.

[fol. 14] Q. All right, sir. Mr. Mills, during the years 1950 to the present date, have you ever given any money to any police officers?

A. I am going to refuse to answer that question on my Constitutional Rights, both Federal and State.

Q. From 1950 up to the present date, so the dates will be inclusive, did you ever see anyone else give any money to any member of the New Orleans Police Department?

A. I am going to refuse to answer that question on my Constitutional rights.

Q. All right, sir.

A. I don't know whether I did or not. So I am going to refuse to answer that question.

Q. All right, sir. Did you ever talk to any police officers about any money paid to New Orleans Police Department?

A. I am going to refuse to answer that question too, Constitutional Rights.

Q. Did you ever talk to any lottery owner about the amount of money that was being paid to members of the New Orleans Police Department?

A. I am going to refuse to answer that question, Constitutional Rights.

By Mr. Hubert: What we want to do is to have you come back next Wednesday which is the 22nd at 10:00 o'clock.

A. Yes, sir.

Q. Well, we will take you down in the elevator.

A. If I am in the hospital—suppose I am in the hospital or something like that?

Q. Well, if you are in the hospital, have your attorney or somebody let us know and bring us these certificates from your doctor that you are in the hospital, in other words, some doctor that is treating you.

A. Because I don't know how this is going to be.

Q. I understand that. You are going to be under supoena to come back next Wednesday.

A. I don't have to have a subpoena, I'll just come back on your word.

Q. Well, we'll have one anyway. It's going to be served on you right now.

CERTIFICATE. I hereby certify that the foregoing is a true and correct transcript of the testimony as reported by me and transcribed on the typewriter by me personally.

S/ Leonard J. Bossier, Jr., Official Court Reporter.

[fol. 15] 2: That on January 27, 1958, August J. Mills, Sr., through counsel, filed a motion for a continuance predicated upon the fact that he was hospitalized and under care of a physician; and, in consequence of said motion, the rule for contempt was continued until February 10, 1958 at 10:00 o'clock A.M.

3: That the following two documents (Form 872-Rev. No. 1956) U.S. Treasury Department, Internal Revenue Service, both dated January 31, 1957, triplicate, addressed to Agnes M. and August J. Mills, Sr., taxpayers of New Orleans, Louisiana, entitled "CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX" each signed by Agnes M. Mills and August J. Mills, Sr., and by Louis H. Schweickhardt, Group Supervisor for Chester A. Usry, District Director of Internal Revenue, for

the years ending December 31, 1952 and 1953, were duly signed and entered into by and between the said parties, and it was agreed therein that the amount of any income, excess profits or war profit taxes due under any return or returns made by or on behalf of the above named Agnes M. and August J. Mills, Sr., for the taxable years ending December 31, 1952 and 1953 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1958, except that, if a notice of a deficiency in tax is sent to said taxpayer or taxpayers by registered mail on or before said date, then the time for making any assessment is prohibited and for sixty days thereafter, and that the said documents attached hereto are true, correct and genuine photostat triplicate copies of what they represent themselves to be, and may be considered as evidence herein.

4: That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are at present engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

5: That publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955, inclusive.

6: That eleven indictments have been returned by the United States Grand Jury against members of the New [fol. 16] Orleans Police Department in connection with the aforementioned investigations; three for tax income evasion and eight for perjury or false statements.

7: That there has existed, and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue

Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

8: That August J. Mills, Sr., had not, at the time of this Grand Jury interrogation of him, stated any facts under oath to the District Attorney or any of his assistants concerning the public bribery, bribery of voters or corrupt influencing articles, nor was he under any such charges in State or Federal Courts at that time.

9: That, at the time of this Grand Jury interrogation, there were on file in the Criminal District Court for the Parish of Orleans the following cases, all involving alleged violations of L.S.A.—R.A. 51:281:

State of Louisiana v. *Jules Crovetto,* Nos. 149-288 through 298;

State of Louisiana v. *Michael Callia,* Nos. 149-340 through 351;

State of Louisiana v. *L. Forsyth* Nos. 149-434 through 450;

State of Louisiana v. *Harold Mills* Nos. 149-505 through 516;

State of Louisiana v. *A. J. Mills, Jr.* Nos. 149-277 through 288.

10: That, at the time of this Grand Jury interrogation of defendant, there were on file in the Civil District Court for the Parish of Orleans, suits by the City of New Orleans

seeking recovery of occupational license taxes for occupations similar and identical with the occupation suggested to have been defendant's by the Grand Jury interrogation; that these suits include the following:

340-598
City of New Orleans v. *Philip James Melancon* .. $1982.49

340-632
City of New Orleans v. *Dennis J. Melancon* 3982.30

337-291
City of New Orleans v. *August J. Mills, Jr.* 3778.00

342-835
City of New Orleans v. *Jules Crovetto* 3750.00

350-474
City of New Orleans v. *Lucius Forsyth* 9000.00

350-611
City of New Orleans v. *Andrew Dominguez* 5985.39

[fol. 17] 338-078
City of New Orleans v. *Paul J. Portes* .....

(Signed) JOHN P. NELSON JR.
Asst. District Attorney for the Parish of Orleans

(Signed) DAVID A. NEWHAUSER

(Signed) MILO B. WILLIAMS
Attorneys for August J. Mills, Sr.

[fol. 18]

Exhibit "B" to Application

STATE OF LOUISIANA

v.

AUGUST J. MILLS, SR.

CRIMINAL DISTRICT COURT
SECTION "E"
No.

MEMORANDUM OF AUTHORITIES

MAY IT PLEASE THE COURT:

This matter is before your Honor on an agreed stipulation of facts which includes defendant's refusal to answer the questions contained in Exhibit "A" attached to the Rule for Contempt filed herein by the Grand Jury for the Parish of Orleans, said refusal being predicated upon the privileges and rights granted him by the Constitution of the United States and the State of Louisiana, particularly Amendment V to the Constitution of the United States of America, reading in part:

> "No person . . . shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law . . . ";

Amendment IX of the same, reading:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people";

and, Amendment XIV thereof, Section 1 reading in part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws";

and, also, Section 2 of Article I of the Constitution of Louisiana, reading in part:

"No person shall be deprived of life, liberty, or property, except by due process of law . . . ";

Section 11 of said Article I, reading in part:

"No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution . . . ";

and, Section 15 of said Article I, reading:

"This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed."

WHERE PRIVILEGE APPLIES

1. *Criminal proceedings*: U. S. CONST. Amend. V; La. Const. Art. I. Section 11.

2. *Civil matters*:

[fol. 19] The constitutional and statutory privilege against self-incrimination applies to civil as well as criminal actions.

Bailey v. *Muse*, 85 So. 2d 918 (Miss)
General Footwear Corp. v. *Berner*, 251 N.Y.S. 562 (Key number series—WITNESSES—Key 293½

3. *Grand Juries*: U. S. Const. Amend V; La. Const. Art I, Sec. 11; and—

A Grand Jury proceeding to determine whether a crime had been committed is a "criminal case" within Constitution proscription against compelling one to be a witness against himself in any "criminal case".

People v. *Dudish*, 166 N.Y.S. 2d 810.

> The constitutional protection against self-incrimination applies to investigations before grand juries as well as to criminal trials.
>
> *Commonwealth* v. *Rhine*, 303 S.W. 2d 301 (Ky.)

How Privilege Invoked

> "No ritualistic formula or talismanic phrase is essential in order to invoke privilege against self-incrimination, and all that is necessary is an objection stated in language that propounder of question may reasonably be expected to understand as an attempt to invoke privilege."
>
> *Emspak* v. *U. S.*, 75 S. Ct. 687

Your Honor will note from the answer at the bottom of page 2 of Exhibit A:

> "I refuse to answer that question on my Constitutional Rights, ~~both Federal~~ and State",

and the answer on page 5 of Exhibit A:

> "But there could be a civil suit on something you couldn't prove or something like that"

that defendant was invoking his privileges and rights, both civil and criminal, guaranteed by both Constitutions.

Exceptions to Privilege

1. *Immunity from prosecution*:

There may be exceptions to this privilege, and Louisiana has attempted to provide one with Section 13 of Art. XIX of the Constitution, and Revised Statutes 14:121 and 15:468. Unfortunately, the Grand Jury and the District Attorney's office has lately in a surge of overzealousness sought to enlarge the restricted scope of these statutes. In this connection, we call your Honor's attention to what the United States Supreme Court has to say.

[fol. 20] "It is when privilege of self-incrimination is *under attack* by those who *wrongly conceive* of it as merely a *shield for the guilty* that *governmental bodies must be most scrupulous in protecting its exercise*" (Italics ours)

Quinn v. *U. S.* 75 S. Ct. 668-669.

Section 13 of Art. XIX of the Louisiana Constitution reads as follows:

"Any person may be compelled to testify in any lawful proceeding against any one who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

Noting the unequivocal underlined words, we pose these questions:

(a) If the Grand Jury questioning of defendant be a "lawful proceeding", against whom was this proceeding being pressed?

(b) Had anyone been charged with the offense of bribery?

As far as this record shows, the obvious answer to both questions is: "No one."

A common sense reading of the language employed clearly shows that the framers of the Constitution intended that the testimony of a witness testifying *against* a person *charged* with *bribery* could not be used against him, the witness. That is not so here. The witness was not testifying against any one who had been *charged*.

Let us see what L.S.A.—R.S. 14:121 provides:

"The offender, under the public bribery, bribery of voters or corrupt influencing articles, who states the facts under oath to the District Attorney charged with the prosecution of the offense, and who gives evidence

tending to convict any other offender under those articles, may, in the discretion of such district attorney, be granted full immunity from prosecution in respect to the offense reported, except for perjury in giving such testimony."

Again, noting the unequivocal underlined words (we will consider the balance of R.S. 14:121 later) we pose these questions:

(a) Who was "the offender"?

The obvious answer is again: "No one." No one had been charged; certainly not the defendant.

(b) Is the Grand Jury the same entity as "the District Attorney" charged with the prosecution of the offense"?

Again the obvious answer is "No".

Such being the case, the defendant herein not being an "offender, under the public bribery etc. articles", and the Grand Jury not being the District Attorney, we submit R.S. 14:121 cannot in good conscience be stretched to fit the facts herein. The defendant never having given facts under oath to the District Attorney, nor had he ever been requested so to do.

[fol. 21] Now, for L.S.A.—R.S. 15:468, upon which the Grand Jury and the District Attorney lean so heavily, and which reads:

"Any person may be compelled to testify in any lawful proceeding against another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing, and shall not be permitted to withhold his testimony upon the ground that it may incriminate him of expose him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony."

Once more, after noting the underlined words, we ask a question:

(a) Was this Grand Jury questioning of defendant "a proceeding against another charged with" *any offense?*

The answer is obviously—"No". In fact, the proceeding was admittedly a fishing expedition designed to land someone who could or might be charged with some offense. And it is interesting to note that, whereas Sec. 13 of Art. XIX, R.S. 14:121 and R.S. 15:468 all have to do with immunity from prosecution for "bribery", the first time this word "bribery" occurs in the questioning of the defendant is on page 4 of Exhibit A.

It is respectfully submitted that words mean what they say and that under

Section 13, Article XIX, La. Const.

> A person may be compelled to testify (as an exception to the criminal rule) ONLY when the other person has been charged with bribery;

and under

L.S.A.—R.S. 14:121

> *Only* a fellow *offender* may be forced to testify (as an exception to the rule) against another charged with violation of the articles noted;

while under

L.S.A.—R.S. 15:468

> A person may be compelled to testify (as an exception to rule) ONLY when the other person has been CHARGED with commercial bribery, public bribery, etc.

Since, as has been illustrated, none of these situations exist herein, defendant cannot be guilty of contempt. Any other conclusion or construction would be in direct disregard of the admonitions given in *Quinn* v. *U.S.* (*supra*) and in *Hoffman* v. *U.S.*, 341 U.S. 479, 95 L.Ed. 1118, wherein the United States Supreme Court said:

"The constitutional guaranty against self-incrimination must be accorded liberal construction in favor of the right which it is intended to secure."

[fol. 22] 2. *Extent of Immunity*:

As has been shown, Louisiana attempts to grant immunity to the following:

(a) "Any person" testifying against any one "charged with having committed the offense of bribery".

La. Const. Article XIX, Sec. 13.

(b) "The offender" testifying against bribery laws "who states facts under oath to the District Attorney" which tend "to convict any other offender under those articles". *R.S. 14:121.*

(c) "Any person" who testifies against "another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing." *R.S. 15:468.*

In each instance the immunity is limited to the statement that the testimony of the witness will not later be used against him. But, in instance "b", the immunity is further restricted to "the discretion of such district attorney".

And by no stretch of the imagination can these statutes be said to grant immunity for offenses against municipalities, States, or the Federal government, other than those which might be enumerated therein.

The law books and reports are replete with authorities to the effect that a witness is not guilty of contempt when the only security offered is of such nebulous and impossible nature.

". . . a witness who declines to accept an immunity from prosecution which the district attorney and court were *powerless to extend* may *not be held guilty of contempt* in refusing to answer questions on the ground that his question might incriminate him."

Apodaca v. *Vivamontes*, 212 P.2d 425, 13 A.L.R. 2d 1427 (see notes)

"Although there are some earlier cases to the contrary, it is generally held that, under *immunity statutes providing only that testimony given by a witness shall not be used against him* in a criminal prosecution, one may stand upon his constitutional guaranty against being compelled to give incriminatory testimony and *refuse to testify when his testimony might furnish leads to other testimony* which would convict him".

58 Am. Jur. Witnesses p. 76, Sec. 90 (and numerous cases cited, including *Arndstein* v. *McCarthy*, 254 U.S. 71, 65 L.Ed. 138; *Counselman* v. *Hitchcock*, 142 U.S. 547, 35 L.Ed. 1110)

"But by the *weight* of *authority* and *better reason*, he will not be *compelled* to *answer* if the *only security* he has *is* that his *testimony will not be used against him*, since it may disclose *offenses hitherto unknown* and lead to the discovery of other evidence whereby he may be convicted.

24 L.R.A., NS, 168, citing *Counselman* v. *Hitchcock*, *supra*, and others.

[fol. 23] "'To sustain the privilege' this Court has recently held, 'it need only be evident from the implications of the question, in the setting in which it is asked, that a *responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result*'. And nearly 150 years ago Chief Justice Marshall enunciated a similar test: 'Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of *the rule that no witness is compelled to furnish any one of them against himself*',"

Emspak v. *U.S.* (supra)

Extent of Privilege

From the foregoing citations it is apparent that the constitutional guaranty against self-incrimination is far reaching; that it must be accorded a liberal construction

(*Hoffman* v. *U.S.* supra), especially when it is under attack through a wrong conception of its true meaning. (*Quinn* v. *U.S.*, supra)

As far back as *U. S.* v. *Aaron Burr*, Fed. Cas. No. 14,692e (see also Ex parte BUTT, 93 S.W. 992), Chief Justice Marshall announced:

> ". . . if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, *it must rest with himself*, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath that his answer would criminate himself, *the court can demand no other testimony of the fact*".

And, even though it has been shown in 24 L.R.A., NS. 169 (citing Ex parte BUTT, supra, and Ex parte Senior, 32 L.R.A. 133) that:

> "A witness cannot be required to show how an answer will criminate him, otherwise the *purpose of the privilege would be frustrated*"

we will show by possible hypothetical cases what far reaching injury could result from the denial of this constitutional privilege to a witness.

EXAMPLE 1.—Witness X, before a Grand Jury investigating public bribery is told that he has immunity under the statutes noted above, and the following ensues:

Q. Do you know police officers A & B?
A. Yes.
Q. Did you ever give them any money?
A. Yes.
Q. For what purpose?
A. So they wouldn't raid my gambling house.

What happens now? X is not charged with bribery but he is [fol. 24] charged with R. S. 14:90, the gambling statute. His testimony is not used against him but the testimony of A. and B. is, together with such other evidence as might have been discovered as a result of his answers to the

Grand Jury. Result? X is convicted of an offense of which the Grand Jury had no knowledge until drawn from X under pretext of immunity.

EXAMPLE 2.—Policeman A has been shot and killed by a person or persons unknown. Witness X appears before a Grand Jury investigating public bribery. He is lulled into a sense of security with the immunity routine and this ensues

Q. Did you ever pay any money to any policeman?
A. Yes.
Q. To whom?
A. Policeman A.
Q. Why?
A. So he wouldn't raid my handbook?
Q. What did he do with the money?
A. He didn't do anything but raise hell that it wasn't enough.
Q. Did you give him any more?
A. No. He started to arrest me and I shot him.

Need anything more be added save but to observe that, except for this blanket of spurious immunity with which the Grand Jury wrapped witness X, the killer of policeman A would still be a person unknown.

EXAMPLE 3.—This is based on an actual question appearing on page 2 of Exhibit A which defendant refused to answer claiming his U. S. and State Constitutional rights. The question will appear as propounded by Mr. Nelson, Assistant District Attorney, and the answer will be as it might have been after District Attorney Hubert extended the restricted immunity on page 6 of Exhibit A.

Q. Mr. Mills, as you already know, this Jury is inquiring into the lottery operation from 1950 to 1955 and that is what we would like to talk to you about. What was your employment from 1950 to 1955?
A. I had the Golden Bell Lottery.

What harm could result from that answer? A very considerable harm. Acting on the information that Mills

operated under the trade name Golden Bell, investigators checked the records and discovered that he had not regis- [fol. 25] tered as an individual operating under a trade name as required by R.S. 51:281. Thereupon, charges are filed against Mills for violation of R.S. 51:281, the number of said charges being restricted only by the number of dates and locations uncovered by the investigators. And these charges would never have been made but for the information given by Mills under the supposed cloak of immunity.

It is suggested that this is a remote possibility? Not so! The records of the Criminal District Court for the Parish of Orleans show that the identical thing happened in over sixty cases:

State of Louisiana v. *Jules Crovetto*,
Nos. 149-288 through 298;
State of Louisiana v. *Michael Callia*,
Nos. 149-340 through 351;
State of Louisiana v. *L. Forsyth*,
Nos. 149-434 through 450;
State of Louisiana v. *Harold Mills*
Nos. 149-505 through 516;
State of Louisiana v. *A. J. Mills, Jr.*
Nos. 149-277 through 288.

All of these are prosecutions for violation of R.S. 51:281. With this array of cold, hard facts confronting him, can the witness be blamed for invoking his Constitutional rights and declining to answer? And, in the face of the pronouncements of the Supreme Court of the United States from the time of Chief Justice Marshall (*Burr* case, supra) to the present time (*Emspak* v. *U.S.*, supra) can the witness be adjudged in contempt for invoking his privilege? We submit that his rights cannot thus be abridged, and "the purpose of the privilege" thus "frustrated". (Ex parte Senior, supra)

Unenumerated Rights

Amendment IX, U. S. Const. reads:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people".

and Article I, Section 15, La. Const. reads:

> "This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed".

"The Ninth Amendment announces and acknowledges in a single sentence that (1) the individual, and not the State, is the source and basis of our social compact and that sovereignty now resides and has always resided in the individual; (2) that our Government exists through the surrender by the individual of a portion of his naturally endowed and inherent rights; (3) that everyone of the people of the United States owns a residue of individual rights [fol. 26] and liberties which have never been, and which are never to be surrendered to the State, but which are still to be recognized, protected and secured; and (4) that individual liberty and rights are inherent, and that such rights are not derived from the Constitution but belong to the individual by natural endowment". (THE FORGOTTEN NINTH AMENDMENT, p. 1, Bobbs-Merrill, publishers)

That the framers of the Constitution of Louisiana recognized this is attested by Article I, Section 15 thereof.

It may be suggested that the Ninth Amendment does not apply to the States. That is not so, for Justice Miller in *Eilenbecker* v. *District Court*, 134 U.S. 31, 33 L.Ed. 801, announced that only

> "... *the first eight articles* of the Amendments to the Constitution have reference to the powers exercised by the government of the United States and not to those of the States".

This interpretation has been followed in several other decisions:

Brown v. *Walker*, 161 U.S. 591, 40 L.Ed. 819;
Holden v. *Hardy*, 169 U.S. 366, 42 L.Ed. 780;
Bolin v. *Nebraska*, 176 U.S. 83, 44 L.Ed. 382;
Ohio v. *Dollison*, 194 U.S. 445, 48 L.Ed. 1062; and,
Palko v. *Connecticut*, 302 U.S. 319, 82 L.Ed. 288

But conceding Amendment Nine to be inapplicable, we still have Section 15 of Article I of our Louisiana Constitution recognizing these unenumerated rights, and what Mr. Patterson says about the Ninth Amendment (FORGOTTEN NINTH AMENDMENT, p. 19) applies equally to our Constitutional provision. He says:

> "There should be little or no doubt with respect to the intended meaning of the Ninth Amendment, because from its language, its purpose and intent is obvious.
>
> The Ninth Amendment to the Constitution is a basic statement of the inherent natural rights of the individual. On its face this Amendment states that there are certain unenumerated rights that are retained by the people. It is a mere assertion that while certain enumerated rights have been expressly protected by the Constitution, the reservation in the Constitution should not be taken to deny or disparage any unenumerated right which was so apparently protected. Nothing could be clearer than this statement. It is a declaration and recognition of individualism and inherent right, and such a declaration is no where else to be found in the Constitution. Its absence elsewhere in the Constitution accounts for its very presence in the Amendment."

What are some of the unenumerated rights? Since there is no list of them, we must resort to hypothesis.
[fol. 27] Suppose the Louisiana should enact a statute providing for imprisonment for ordinary debt. There is no guaranty in either the U. S. or Louisiana Constitutions which prohibits imprisonment for debt, but is there any doubt but that the Supreme Court of Louisiana, and certainly the United States Supreme Court would declare such a statute void?

Suppose Louisiana should enact a statute enabling one with a fancied claim against another to require that other person to disclose to him all details of their transactions PRIOR to the filing of a suit. There is no prohibition in either Constitution against such ridiculous procedure, but the right of privacy as to business transactions until aired

by due process of law is inherent in all individuals. Is there any doubt as to what the Supreme Courts would do with such a statute?

Yet, that is exactly the situation here. If the defendant were required, under the provisions of the Louisiana Constitution and Revised Statutes relied on by the Grand Jury, to answer the question about his occupation during 1950 to 1955 and other questions that would have followed, the provisions relied on by the Grand Jury would in effect become just such a hypothetical statute as suggested above, for the defendant might lay himself open to a multiplicity of legal actions, including suits for occupational licenses, which never would have been instituted but for his answer extracted under that cloak of fancied immunity.

That this is not a remote possibility is shown by the docket of the Civil District Court for the Parish of Orleans containing suits for occupational license for occupations similar to that suggested by the questions propounded to defendant, with the following numbers, names and amounts:

340-598
City of New Orleans v. *Philip James Melancon* .. $1982.49

340-632
City of New Orleans v. *Dennis J. Melancon* 3982.30

337-291
City of New Orleans v. *August J. Mills, Jr.* 8778.00

342-835
City of New Orleans v. *Jules Crovetto* 3750.00

350-474
City of New Orleans v. *Lucius Forsyth* 9000.00

350-611
City of New Orleans v. *Andrew Dominguez* 5985.39

338-078
City of New Orleans v. *Paul J. Portes* .....

Again we ask, in the face of these facts, can the witness be blamed for invoking his Constitutional rights. And we submit it is not contempt to repulse this adroitly circumlocutory

[fol. 28] invasion of the inherent right of privacy guaranteed by the Constitutions of the United States and Louisiana.

It is respectfully submitted that the rule taken against defendant be dismissed and discharged and that he be relieved from prosecution thereunder and purged of contempt for the reasons hereinabove set forth particularly:

1: Article XIX—Section 13 Louisiana Constitution and Revised Statutes 14:121 and 15:468 are violative of Amendments V, IX and Section 1 of Amendment XIV of the Constitution of the United States; and Section 15 of Article I of the Constitution of Louisiana.

2: If the foregoing be not unconstitutional, then they are inapplicable herein because when the questions were propounded neither was defendant "an offender" nor had any one been charged with bribery in the proceeding wherein the questioning took place.

Respectfully submitted

(Signed) David A. Neuhauser
David A. Neuhauser

(Signed) Milo B. Williams
Milo B. Williams
Attorneys for August Mills, Sr.

[fol. 29]

Exhibit "C" to Application

STATE OF LOUISIANA

v.

AUGUST J. MILLS, SR.

CRIMINAL DISTRICT COURT

SECTION "E"

NO.

ANSWER OF AUGUST J. MILLS, SR. TO RULE FOR CONTEMPT

TO THE HONORABLE J. BERNARD COCKE, JUDGE, CRIMINAL DISTRICT COURT, PARISH OF ORLEANS, STATE OF LOUISIANA:

NOW INTO COURT comes August J. Mills, Sr., and for answer to the rule for contempt says that:

1: Respondent declined to answer the questions listed in Exhibit A attached to said rule for contempt for the following reasons:

> Respondent believes and avers that being compelled to answer these questions under the circumstances and surroundings and facts existing at the time the questions were propounded would be an abridgement and denial of his constitutional rights under Amendments V, IX, XIV of the Constitution of the United States, and Sections 2, 11 and 15 of Article I of the Constitution of Louisiana.

2: Respondent has been and believes he is now under investigation by the United States Internal Revenue Service and others concerning income tax returns for the years 1952 and 1953, and any answers to the questions propounded, and others that would inevitably follow, might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings under the laws of the United States.

3: Respondent and his wife have been required by the United States Internal Revenue Service to sign waivers

of prescription entitled "CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX" concerning income tax returns for the years ending December 31, 1952 and December 31, 1953, which said waivers are dated January 31, 1957, and which are attached hereto and made part hereof. Respondent further avers that he has no assurance but that at the expiration date thereof, June 30th, 1958, he might not be required to sign further waivers.

4: The period of limitation of criminal prosecution for offenses arising under the United States Internal Revenue laws (USCA 26-6531) is six years for offenses involving

[fol. 30] (a) The defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner.

(b) for the offense of wilfully attempting in any manner to evade or defeat any tax or the payment thereof;

(c) for the offense of wilfully aiding or assisting in, etc., of a false or fraudulent income tax return, affidavit, claim or document

(d) for the offense of wilfully failing to pay any tax or make any return at the time or times required by law

(e) for the offense of perjury or making a false return (USCA 26-7206-7207)

(f) for attempting to interfere with the administration of the internal revenue laws (USCA 26-Sec. 7212)

(g) for offenses arising under Sec. 371 of title 18 of the U. S. Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

5: The Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are at present engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

6: Publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the Federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955 inclusive.

7: Eleven indictments have been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three for income tax evasion and eight for perjury or false statements.

8. There has existed and now exists cooperation and collaboration between the District Attorney for the Parish of Orleans, the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and which investigators, together with the Police Bureau of Investigation of the City of New Orleans, with reference to public bribery and income tax evasion by members of the New Orleans Police Department and that any answer to the questions propounded, [fol. 31] and those that would inevitably follow could form a basis for, or links in a chain of evidence establishing such basis for charges against respondent for violation of the laws of the United States and of the State of Louisiana other than those of public bribery.

9: Respondent was not required to answer the questions propounded, and those that would inevitably follow, either in Section 13 of Article XIX because no one had been "charged for having committed the offense of bribery" or, under L.S.A.-R.S. 14:121 because respondent was not "the offender"; or under L.S.A.-R.S. 15:468 because the Grand Jury investigation was not a proceeding "against another charged with committing the offense of bribery, public bribery, bribery of voters or corrupt influencing."

10: Over 60 cases, at the time these questions were propounded, had already been filed by the State of Louisiana against various defendants in the Criminal District Court for the Parish of Orleans for violation of L.S.A.-R.S. 51:281, relative to an individual operating under a trade

name without having previously registered same, and any answer to these questions, or the others that would inevitably follow, could have formed the basis or furnished a link in a chain of evidence leading to such basis, for similar charges against respondent. A few of these cases are:

State of Louisiana v. *Jules Crovetto*,
Nos. 149-288 through 298;
State of Louisiana v. *Michael Callia*,
Nos. 149-340 through 351;
State of Louisiana v. *L. Forsyth*,
Nos. 149-434 through 450;
State of Louisiana v. *Harold Mills*,
Nos. 149-505 through 516;
State of Louisiana v. *A. J. Mills, Jr.*,
Nos. 149-277 through 288.

11: The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else.

12: At the time these questions, and the others that would inevitably follow, were propounded there were on file in the Civil District Court for the Parish of Orlean several suits by the City of New Orleans seeking recovery of thousands of dollars for Occupational License for occupations similar to that suggested by the questions propounded to respondent, and any answer would have been in derogation of respondent's inherent right of privacy guaranteed by Amendment IX of the Constitution of the United States and Section 15 of Article I of the Constitution of Louisiana, in that respondent might have been liable to a similar suit.

13: The so-called immunity offered respondent is merely conditional, not conclusive and not binding on any successor to the District Attorney proffering such immunity.

[fol. 32] 14: If it be construed that the provisions of Section 13 of Article XIX of the Constitution of Louisiana and L.A.S.-R.S. 14:121 and R.S. 15:468 compel respondent to answer the questions propounded, and the inevitable following ones, then these provisions violate the provisions of

Section 1 of Amendment XIV of the Constitution of the United States, which says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

15: Respondent, at the time of this Grand Jury interrogation had not stated any facts under oath to the District Attorney or any of his assistants concerning the public bribery, bribery of voters or corrupt influencing articles.

16: Any doubt herein should be resolved in favor of respondent (*Quinn* v. *U.S.* 75 S. Ct. 668; *Hoffman* v. *U.S.* 341 U.S. 479) or the very purpose of the privilege would be frustrated. (32 L.R.A. 133).

WHEREFORE, for the reasons above set out, to be amplified in written brief filed on the hearing of this rule, respondent respectfully prays that the rule taken against him be dismissed and discharged and respondent relieved from liability and prosecution hereunder and that this answer be held sufficient to purge your defendant of contempt.

Respectfully submitted,

(Signed) DAVID A. NEUHAUSER
David A. Neuhauser

(Signed) MILO B. WILLIAMS
Milo B. Williams
Attorneys for Respondent

Duly sworn to by August J. Mills, Sr., jurat omitted in printing.

[fol. 33]

Exhibit "D" to Application

STATE OF LOUISIANA	CRIMINAL DISTRICT COURT
VERSUS	PARISH OF ORLEANS
AUGUST J. MILLS, SR.	SECTION "E"

JUDGMENT ON RULE FOR CONTEMPT

August J. Mills, Sr., was cited in a rule for contempt, it being alleged, that he refused to answer questions propounded of him by the Grand Jury for the Parish of Orleans.

The subject matter under investigation concerned payment by relator of bribes to members of the New Orleans Police Department for protection from arrest for lottery gambling operations.

While admitting the existence of exceptions under the law of Louisiana to the right to claim immunity from testimonial compulsion, relator contends that these exceptions are not applicable to his case.

Art. 1, Section 11 of the Constitution of Louisiana provides:

> "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution. * * * "

The exception referred to above appears in Section 13 of Article 19 of the same constitution and reads as follows:

> "Any person may be compelled to testify in any lawful proceeding against anyone who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

In the case of *State* v. *Rodriguez,* 219 La. 217, 52 So. 2d 756, the Supreme Court in passing upon these two sections of the constitution said:

> "We must keep in mind that we are here dealing with two sections of our Constitution, which are of equal force and are not in conflict, and not with a provision of the Constitution granting the privilege against self-incrimination and an act of the Legislature seeking to take it away or make an exception thereto."
>
> * * * * * * *
>
> "We fully agree with the conclusions made by the [fol. 34] trial judge in his return to the writ, in which he said: 'The conclusion is inescapable that our State has the right to grant immunity to its citizens from being compelled to give testimony that will incriminate them, or to withhold that right, or give it under certain conditions or subject to certain exceptions. The people of this State have chosen to give it subject to the exception with which we are here concerned.'"

In rounding out a complete modus operandi for the more effective prosecution of the crime of bribery, the legislature enacted LSA-RS 14:121, and LSA-RS 15:468.

L. S. A.-R. S. 14:121 provides:

> "The offender under the public bribery, bribery of voters or corrupt influencing articles, who states the facts under oath to the district attorney charged with the prosecution of the offense, and who gives evidence tending to convict any other offender under those articles, may, in the discretion of such district attorney be granted full immunity from prosecution in respect to the offense reported, except for perjury in giving such testimony."

L. S. A.-R. S. 15:468 provides:

> "Any person may be compelled to testify in any lawful proceeding against another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing, and shall not be permitted to withhold his

testimony upon the ground that it may incriminate him or expose him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony."

In seeking to place his case beyond the exception contained in Section 13 of Article 19 of the Constitution, relator poses the following questions:

(a) "If the Grand Jury questioning of defendant be a 'lawful proceeding', against whom was this proceeding being pressed?"

(b) "Had anyone been charged with the offense of bribery?"

Relator in treating L.S.A.-R.S. 14:421, for the same purpose asks the question:

"Who was "the offender?"

And again in discussing L.S.A.-R.S. 15:468, and again for the same reason, relator inquires:

[fol. 35] "Was the Grand Jury questioning of defendant "a proceeding against another charged with "any offense"?"

Having himself answered these questions in the negative, relator then asserts:

"A person may be compelled to testify (as an exception to the crimination rule) ONLY when the other person has been charged with bribery;"

Sec. 13, Art. 19., La. Const.

"*Only* a fellow offender may be forced to testify (as an exception to the rule) against another charged with violation of the articles noted;"

L.S.A.-R.S. 14:121

"A person may be compelled to testify (as an exception to rule) ONLY when the other person has been CHARGED with commercial bribery, public bribery, etc."

L.S.A.-R.S. 15:468.

The Supreme Court of Louisiana answered relator's questions, and passed upon the merit of his contentions in the case of *State* v. *Rodriguez*, 219 La. 217, 52 So. 2d 756.

In that case the relator urged the court to hold "(2) that since he was not advised that anyone had been *charged* with the offense of bribery, Section 13 of Article 19 of the Constitution has no application, etc."

In disposing of this question the Court said:

"Relator's second contention is that the word 'charged' as used in Section 13 of Article 19 means 'charged in an affidavit, bill of information, or indictment'. Under this interpretation the provisions of this section would and could apply only in a trial before the judge or petit jury. If this were the interpretation intended by the drafters of the Constitution, they could have easily said, 'Any person may be compelled to testify in any lawful proceeding against anyone who may be charged in an affidavit, bill of information, or indictment with having committed the offense of bribery * * * '. That the framers did not intend for this section to apply only to *trials* of accused persons is conclusively shown by its specific provision that any person may be compelled to testify in any lawful proceeding". Certainly investigations being conducted by grand juries, those by district attorneys under L.S.A.-R.S. 15:17.1 preliminary hearings before committing magistrates and coroner's inqests are "lawful proceedings", within the meaning of the article.

[fol. 36] In the instant case the grand jury under the charge of the court was investigating crimes of public bribery, and in doing so it was its sworn duty to inquire diligently into whether such a crime or crimes had been committed, and true presentment make. Under such circumstances, to give relator's interpretation to the article would, in effect nullify and make meaningless

their article insofar as grand jury investigations are concerned. Due to the nature of the crime of bribery, it is difficult and often impossible to secure evidence against any party to the transaction except by the evidence of another party to the bribe, and, if the grand jury is not permitted to compel such testimony, the perpetrator will very likely never be formally charged and brought to trial.

It is our opinion it was the intention of the drafters of the Constitution that the word 'charged' was not to be limited and restricted solely to a formal charge by affidavit, information, or indictment. Under this interpretation, the provision of the article which assures relator that his testimony cannot thereafter be used against him in any judicial proceeding fully protects him whether or not a formal charge is pending against any individual at the time relator's testimony is given in a lawful proceeding.

The reasoning adopted by the Court in the *Rodriguez* case as it affects Section 13 of Article 19 of the Constitution, is equally applicable in the case at bar to L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468. There is no merit to relator's contention that his case falls without the exceptions contained in Sec. 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468.

Under the caption Extent of Immunity, relator raises his second contention.

In this connection it is asserted that the grants of immunity provided for in Sec. 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 are not all inclusive, but are obviously limited to the statement that the testimony of the witness will not later be used against him. It is also contended that the grant of immunity contained in Sec. 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 cannot affect offenses against municipalities, states or the Federal government.

In answer to this contention, the case of *State* v. *Rodriguez*, 219 La. 217, 52 So. 2d 756, is authority for the right in the State to restrict or limit immunity.

[fol. 37] As the relator in the case at bar was not under any state, federal or municipal charges, at the time he refused to answer the questions, his case falls under the authority of *State* v. *Ford*, et als., 99 So. 2d 320, and not *State* vs. *Dominguez*, 82 So. 2d 12, 228 La. 284. This contention is without merit.

As to relator's contention that the 5th. and 14th Amendments to the Constitution of the United States are applicable in the case at bar, suffice it to say that the *Rodriguez* and *Ford* cases settled this claim.

> "In the leading case of Twining vs. New Jersey, 1908, 211 U. S. 78, 29 S. Ct. 14, 26, 53 L. Ed. 97, it was held that the exemption from self-incrimination provided by the Fifth Amendment was not one of the fundamental rights of national citizenship so as to be included among the privileges and immunities of citizens of the United States which the states are forbidden to abridge by the provision of the Fourteenth Amendment that no state shall deprive any person of life, liberty, or property without due process of law. In the cited case the Supreme Court said: " * * * we think that the exemption from compulsory self-incrimination in the courts of the states is not secured by any part of the Federal Constitution."
>
> *State* vs. *Ford, et als.*, 99 So. 2d 320.
> *State* vs. *Rodriguez*, 219 La. 217, 52 So. 2d 756.

In the case of *State* vs. *McCarroll*, 138 La. 454, 70 So. 448, the Supreme Court of Louisiana held that Art. 15 of the Constitution of 1898 and 1913 reading the same as that now contained in Art. 1 Sec. 15 of the Constitution of 1921, was "meaningless, as the people of this state retain all rights the exercise of which is not prohibited by the Constitution of the state or the United States."

As the Constitution of 1921 did in fact enumerate and set out the circumstances, conditions and limitations, affecting the right of the citizen to claim immunity from testimonial compulsion, Sec. 15 of Art. 1 of the Constitution of his state and the 9th. Amendment to the Constitution of the

United States are inapplicable to the issues presented in the case at bar.

For the reasons hereinabove recited the court is of the opinion that the defendant in rule, August J. Mills, Sr., should answer the questions propounded by the GRand Jury as set out in the rule for contempt herein filed.

[fol. 38] It Is Therefore Ordered that the said August J. Mills, Sr., repair to the room of the Grand Jury, and there answer the questions propounded of him by the Grand Jury, or in failing so to do, suffer the penalties provided by law.

New Orleans, Louisiana 19th day of February, 1958.

/s/ J. Bernard Cocke
Judge

[fol. 39]

Exhibit "E" to Application

State of Louisiana

v.

August J. Mills, Sr.

Criminal District Court
Section "E"
No.

Filed ..... Deputy Clerk

Bill of Exception No. 1

Now comes defendant, August J. Mills, Sr., aided by his counsel, David A. Neuhauser and Milo B. Williams,:

Be It Remembered that, on February 10th, 1958, defendant in proper person and aided by counsel filed an answer to the motion and rule for contempt filed by the Grand Jury for the Parish of Orleans on January 22nd, 1958 setting forth as reasons for declining to answer the questions noted in Exhibit A herein, namely, that:

1. Being compelled to answer these questions under the circumstances, surroundings and facts existing at the time the questions were propounded would be an abridgement and denial of his Constitutional rights under Amendments V, IX and XIV of the Constitution of the United States, and Sections 2, 11 and 15 of Article I of the Constitution of Louisiana;

2. Any answers to the questions propounded, and others that would inevitably follow, might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings under the laws of the United States and of the State of Louisiana;

3. The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else

praying that the rule taken against defendant be dismissed and discharged and that he be relieved from liability and prosecution hereunder and that his answer be held sufficient to purge him of contempt;

That, after argument the Court took this matter under advisement and, on February 19th, 1958 rendered a judgment ordering defendant to answer the questions propounded by the Grand Jury, and this Bill of Exception No. 1 was seasonably reserved, making part thereof

1. Motion filed by the Grand Jury for the Parish of Orleans, State of Louisiana on January 22, 1958, seeking to have defendant adjudged in contempt for declining to answer the questions set forth in Exhibit A attached thereto;

2. Exhibit A, attached to said Motion, being entitled "PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY ON WEDNESDAY, JANUARY 15, 1958";

[fol. 40] 3. Motion for Continuance filed by defendant's counsel January 27, 1958;

4. Agreed Stipulation of Facts signed by John P. Nelson, Jr., Assistant District Attorney, and filed herein February 10, 1958;

5. Answer filed February 10, 1958 by defendant to the aforesaid Motion and Rule for Contempt filed by the said Grand Jury for the Parish of Orleans;

6. Memorandum of authorities filed by Defendant's counsel February 10, 1958;

7. Judgment ordering defendant to answer the questions he declined to answer, together with any reasons assigned by the Court for such judgment; and

8. The entire record herein.

That this Bill of Exception is now submitted with the prayer that it be signed by the Judge of this Court pursuant to the statute in such cases made and provided, which is accordingly done this 19th day of February, 1958.

(Signed) J. Bernard Cocke
Judge

(Signed) David A. Neuhauser
David A. Neuhauser

(Signed) Milo B. Williams
Milo B. Williams
Attorneys for Defendant

[fol. 41]

Exhibit "F" to Application

State of Louisiana	Criminal District Court
v.	Section "E"
August J. Mills, Sr.	No.

Motion for New Trial

On motion of August J. Mills, Sr., defendant in rule for contempt, and on respectfully suggesting to the Court that there is error to the prejudice of your defendant in the

judgment finding him guilty of contempt of court, and that a new trial should be granted herein.

It is ordered that a new trial be granted herein.

New Orleans, Louisiana, February 19th, 1958.

.....

JUDGE

Duly sworn to by August J. Mills, Sr., jurat omitted in printing.

[fol. 42]

Exhibit "G" to Application

STATE OF LOUISIANA	CRIMINAL DISTRICT COURT
v.	SECTION "E"
AUGUST J. MILLS, SR.	NO.

Filed ..... Deputy Clerk

BILL OF EXCEPTION NO. 2

Now comes defendant, August J. Mills, Sr., aided by his counsel, David A. Neuhauser and Milo B. Williams,:

BE IT REMEMBERED that, on February 19, 1958, defendant in proper person and aided by counsel filed a motion for a new trial which, after argument, was denied, and this Bill of Exception No. 2 was seasonably reserved making part thereof all of those items made part of Bill of Exception No. 1, copy of which is attached hereto and made part hereof, and

9. Motion for a new trial;

10. Judgment refusing new trial, and reasons, if any;

11. The entire record herein.

That this Bill of Exception is now submitted with the prayer that it be signed by the Judge of this Court pursuant to the statute in such cases made and provided, which is accordingly done this 19th day of February, 1958.

(Signed) J. Bernard Cocke
Judge

(Signed) David A. Neuhauser
David A. Neuhauser

(Signed) Milo B. Williams
Milo B. Williams
Attorneys for Defendant

[fol. 43]

Exhibit "H" to Application

State of Louisiana — Criminal District Court

vs. — Section "E"

August J. Mills, Sr.

Notice of Intention to Apply for Writs

Honorable J. Bernard Cocke, Judge of Section "E" Criminal District Court for the Parish of Orleans and State of Louisiana

AND

Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, State of Louisiana.

We respectfully notify you of our intention to apply to the Supreme Court for writs of Certiorari, Mandamus and Prohibition, to review the judgment rendered by you against the above named party for Contempt of Court.

We respectfully request that in accordance with the rules of the Louisiana Supreme Court, that execution of the said

judgment be suspended pending the hearing of the said application by the Louisiana Supreme Court.

New Orleans, Louisiana
February 10th, 1958.

(Signed) DAVID A. NEUHAUSER

(Signed) MILO B. WILLIAMS
Attorneys for Respondent
in Rule for Contempt.

Order.

Let defendant, August J. Mills Sr., be granted until ..... day of ..... 1958 within which to apply for Remedial Writs to the Supreme Court of Louisiana.

.....
Judge Division E

I hereby certify that a copy ~~of~~ hereof has been delivered this day by me to the Assistant District Attorney assigned to Section E.

(Signed) MILO B. WILLIAMS
of Counsel for Defendant

[fol. 44]

Exhibit "I" to Application

THE STATE OF LOUISIANA | PARISH OF ORLEANS
SS.
CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one Louis E. Bagneris, and one Jules Crovetto, and one Frank Schnell, and one Lionel Barthelemy, and one Mae S. Sanders, and one August J. Mills, Jr., and one Casimir Muller, and one Harold F. Mills, and one Michael Callia, and one Ripoll C. Robert, and one

Lucius Forsythe, and one Andrew Dominguez, and one Arthur C. Mills, and one August J. Mills, Sr., and one Edwin H. Sbisa, and one George L. Hoffman, and one Frank A. Italiano, and one Aaron Harris, and one William J. Healy, and one Matteo J. Azcona, and one J. Jeff Albert, and one Edward Herman, and one Harry Daniels, and one Milton L. Burel, and one Joseph L. Scheuering, and one Pat Comiskey, and one Jerry Pons, and one George Pecoraro, and one Edwin Fauria, each late of the Parish of Orleans between January 1, 1949 and June 30, 1955 with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans did wilfully and unlawfully conspire together to commit the crime of Public Bribery, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

NEGATIVE PRESCRIPTION.

And now the said Grand Jury for the Parish of Orleans, State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans in the name and by the authority of the said State upon their oath gives the Court here to understand and be informed that although more than one year has elapsed since the commission of the aforesaid offense in manner and form as aforesaid, yet one year has not elapsed since the commission of the aforesaid offense was made known to the Judge, District Attorney, or Grand Jury having jurisdiction thereof,

contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

Clerk's Office May 13th 1958

A TRUE COPY.

[Signature Illegible] Deputy Clerk,
Criminal District Court,
Parish of Orleans.

[SEAL]

/s/ JOHN P. NELSON, JR.
District Attorney
for the Parish of Orleans.

[fol. 47]

IN THE SUPREME COURT OF LOUISIANA
New Orleans

No. 43,972

BY MCCALEB, J.:

STATE OF LOUISIANA

v.

AUGUST J. MILLS, SR.

ORDER REFUSING WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION—March 3, 1958

In re: August J. Mills, Sr. Applying for writs of certiorari, mandamus and prohibition

Writs refused.

We find no error of law in the ruling complained of.

/s/ EHMcC, /s/ ALP, /s/ JBH, /s/ FWH, /s/ HAM.

I respectfully dissent.

/s/ JDS

[fol. 48]

IN THE SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

v.

AUGUST J. MILLS, SR.

In re: AUGUST J. MILLS, SR., APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

FOURNET, Chief Justice (dissenting from the refusal to grant the writs.)

Under the express provisions of the Louisiana Constitution of 1921 that are to be found under the heading of "Bill of Rights," Section 11 declares that "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution * * *." The only exception to be found in this Constitution is in Article XIX, which, under the heading of General Provisions, contains Section 13, declaring: "Any person may be compelled to testify in any lawful proceeding *Against any one who may be charged with having committed the offense of bribery* * * *." (The emphasis has been supplied by me.)

In the instant case the relator is not requested to testify against anyone "charged with having committed the offense of bribery," for there is no such charge pending against anyone, even by affidavit. From the questions propounded it would appear this is merely a "fishing expedition" for discovery of evidence of this character. It necessarily follows Section 13 is clearly inapplicable here.

[fol. 49] Moreover, it is my opinion that the relator is entitled to the protection offered by the 5th and 14th amendments to the Constitution of the United States under the showing that is made.

I therefore respectfully dissent from the refusal to grant these writs.

[fol. 50]

STATE OF LOUISIANA

versus

AUGUST J. MILLS, SR.

No. 43-972

SUPREME COURT OF LOUISIANA

MOTION FOR STAY OF EXECUTION AND ORDER GRANTING SAME (omitted in printing).

[fol. 55] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 56] SUPREME COURT OF THE UNITED STATES

No. 75, October Term, 1958

AUGUST J. MILLS, SR., Petitioner,

v.

STATE OF LOUISIANA.

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with No. 74 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U.S.
FILED
MAY 23 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 74

HENRY J. MILLS and
OSMOND J. LITOLFF,
Petitioners

versus

STATE OF LOUISIANA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

EUGENE STANLEY,
819 Whitney Bldg.,
New Orleans, La.

ALBERT B. KOORIE
Carondelet Bldg.,
New Orleans, La.
Counsel for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. _____

HENRY J. MILLS and
OSMOND J. LITOLFF,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

TO THE HONORABLES, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Henry J. Mills and Osmond J. Litolff, petitioners, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, dated March 3, 1958, entered in the case of State of Louisiana vs. Henry J. Mills and Osmond J. Litolff, No. 43939 of the docket of the Supreme Court of Louisiana, rejecting and denying the application of the said Henry J. Mills and Osmond J. Litolff, petitioners, for writs or certiorari, mandamus and prohibition, to review the judgment of Honorable J. Bernard Cocke, Judge of Section E, Criminal District Court

for the Parish of Orleans, State of Louisiana, adjudging and finding the said Henry J. Mills and Osmond J. Litolff, petitioners, guilty of contempt of court and sentencing each of said petitioners to pay a fine of $100 and to serve ten days in the Parish prison of the City of New Orleans, and in default of the payment of said fine, sentencing each of said petitioners to serve ten days additional in said Parish prison of the City of New Orleans.

The said judgment of the Supreme Court of the State of Louisiana rejecting and denying the application of the said Henry J. Mills and the said Osmond J. Litolff, for the above mentioned writs, is a final judgment, no application for a rehearing being permitted under the Rules of the said Supreme Court of Louisiana when the said Court has refused to grant a writ of certiorari or review, or in the alternative, a writ of mandamus or prohibition or rule nisi. (Sec. 5, RXII, Rules La. Supreme Court) (See certified copy of said rules attached to typewritten record of said case filed with this application).

The said Supreme Court of Louisiana is the highest court of the State of Louisiana and petitioners, Henry J. Mills and Osmond J. Litolff have exhausted all legal remedies possible in the Courts of the State of Louisiana.

OPINIONS BELOW

The opinion of the Supreme Court of Louisiana rejecting and denying petitioners' application for writs of certiorari, mandamus and prohibition has not been published in any official or unofficial report.

The written opinion of the Supreme Court of Louisiana, denying petitioners' application for the aforesaid writs, as recorded in the minutes of the Court, will be found on page 97 of the typewritten record of the Supreme Court of Louisiana, which accompanies this petition, duly certified as true and correct.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Title 28 United States Code, Sec. 1257 (3) which provides, in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "By writ of certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * or statutes of * * * the United States".

Petitioners respectfully contend that they have been denied rights, privileges and immunities guaranteed petitioners by the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

QUESTIONS PRESENTED FOR REVIEW

The Supreme Court of Louisiana erred in refusing to issue the writs of mandamus and prohibition prayed for and in failing to annul and set aside the judgments and senten-

ces for contempt against petitioners, and in failing to hold that petitioners were legally justified in claiming their privilege against self-incrimination under the Fifth and Fourteenth Amendments to the Constitution of the United States of America, when called as witnesses before the Grand Jury of the Parish of Orleans, because:

(a) In answering such questions, such answers would incriminate them or tend to incriminate them, or would afford a link in a chain of evidence which would become the basis of subsequent prosecutions under the laws of the United States of America, or which could lead to the discovery of evidence which could be made the basis of criminal prosecutions against petitioners for violating the income tax law (and other Statutes) of the United States of America,

and further, because:

(b) The District Attorney of the Parish of Orleans, who is the legal adviser of the Grand Jury for the Parish of Orleans, and who was the officer who would interrogate witnesses appearing before the said Grand Jury, *in the stipulation entered into* by and between the said District Attorney and Eugene Stanley, attorney for petitioners, *agreed and stipulated*, among other things, *that certain facts should be considered as evidence* herein in lieu of the taking of testimony on the hearing of the rule for contempt, *and among the said facts to be*

considered as evidence without the necessity of taking formal testimony thereon (see par. 7 of Stipulation "C" regarding petitioner Osmond J. Litolff, page 53 of the printed record of the Supreme Court of Louisiana, and see par. 7 of the Stipulation as to petitioner Henry J. Mills, page 46 of the printed record of the Supreme Court of the State of Louisiana) *was the fact that there existed and did exist at the time the said Grand Jury hearing was being held co-operation and collaboration between the District Attorney for the Parish of Orleans, Hon. Leon D. Hubert, Jr., and the United States Attorney for the Eastern District of Louisiana, and the Internal Revenue Service of the United States of America, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that Hon. Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasions, felonies under the laws of the United States of America and the State of Louisiana.*

Further that petitioners were then under investigation by agents of the United States Department of Internal Revenue and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951.

inclusive, and petitioners had been required by the investigating officers of the United States to sign waivers against prescription of, and concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, so as to afford such investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against petitioners for any violation of the income tax laws or other federal statutes which said investigating officers would claim petitioners had violated, the statutory period of limitation on criminal prosecutions for offenses under the United States Internal Revenue laws (six years) (U. S. Code Title 26-6531) not having elapsed regarding petitioners' income tax returns.

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution of the United States reading in part, as follows:

"* * * nor shall he be compelled in any criminal case to be a witness against himself" (U. S. Constitution, Amendment V) and

"* * * nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (U.S. Constitution, Amendment XIV).

STATEMENT OF THE CASE

Petitioners, Henry J. Mills and Osmond J. Litolff, on January 22, 1958, were subpoenaed as witnesses before the Grand Jury of the Parish of Orleans and an attempt was made by the District Attorney for the Parish of Orleans to interrogate petitioners, under oath, regarding the current political bribery and income tax evasion by members of the New Orleans Police Department, and others, and petitioners, at that time, on advice of counsel, refused to answer such questions, claiming their constitutional right against self-incrimination under the Constitution of the State of Louisiana (Section 11 of Article One and Section 13 of Article 19) and under the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Petitioners, in refusing to answer such questions, expressed a fear of federal prosecution under the income tax laws of the United States and other federal laws, all felonies, invoking the constitutional provisions above mentioned, because to answer such questions would incriminate, or tend to incriminate them, or would afford a link in a chain of evidence which could become the basis of subsequent prosecutions under the laws of the United States of America, or could lead to the discovery of evidence which could be made the basis of criminal prosecutions against petitioners for violating the laws of the State of Louisiana, and/or the laws of the United States of America, etc.

Petitioners contended they were in actual and immediate danger of prosecution by the United States of America, under the income tax law and other federal laws, all felonies,

because they were under investigation by the investigating officers of the United States Internal Revenue Department and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951, inclusive. (See typewritten certified copy of record of Louisiana Supreme Court-Stipulation — page 43 to 46 as to petitioner, Henry J. Mills, and stipulation — pages 51 to 54 as to petitioner, Osmond J. Litolff).

Photostatic copies of the waivers signed by petitioner, Osmond J. Litolff, and his wife, for the above years, will be found on pages 71 to 74, inclusive, of the typewritten record of the Louisiana Supreme Court, and photostatic copies of the waivers as to petitioner, Henry Mills, signed by the said Henry Mills and his wife, will be found on pages 75 to 78, inclusive, of the typewritten record of the Louisiana Supreme Court, and a letter from the United States Treasury Department, Internal Revenue Service, to petitioner Henry Mills and his wife, acknowledging receipt of the consent waivers above mentioned, will be found on page 79 of the typewritten record of the Louisiana Supreme Court.

The reasons of the Trial Judge for refusing to uphold petitioners' claim against self-incrimination under the Fifth and Fourteenth Amendments to the United States Constitution will be found on pages 82 to 89 of the typewritten record of the Louisiana Supreme Court, a certified copy of which accompanies this application.

The judgment of the trial judge finding petitioners guilty of contempt of court and sentencing each of petitioners to pay a fine of $100 and to serve ten days in the Parish Prison of the City of New Orleans and in default of the payment

of said fine to serve ten days additional in the said Parish prison, will be found on page 94 and 95 of the typewritten record of the Louisiana Supreme Court, a certified copy of which accompanies this application.

Petitioners, after having given due notice to the trial Judge and the District Attorney (see typewritten record of the Louisiana Supreme Court, page 81) of petitioners' intention to apply to the Louisiana Supreme Court for writs of certiorari, mandamus and prohibition to review the judgment and sentences finding petitioners guilty of contempt and sentencing them as above set out, filed their application for such writs in the Louisiana Supreme Court.

This application will be found on pages 1 to 22 of the typewritten record of the Louisiana Supreme Court, a certified copy of which accompanies this application.

The judgment of the Louisiana Supreme Court denying petitioners' application, and refusing to issue the writs of certiorari, mandamus and prohibition prayed for, will be found on page 97 of the typewritten record of the Louisiana Supreme Court, a certified copy of which accompanies this application.

Petitioners' application to the Louisiana Supreme Court for a stay of execution, in order to apply to this Honorable Court for a writ of certiorari to the Louisiana Supreme Court will be found on pages 98 to 100 of the typewritten record of the Louisiana Supreme Court, a certified copy of which accompanies this application.

The Order of Hon. John B. Fournet, Chief Justice of the Louisiana Supreme Court, granting petitioners a stay of execution of the mandate of the Louisiana Supreme Court upon petitioners furnishing bond in the sum of $200, (said order being dated March 4, 1958,) will be found on page 101 of the typewritten record of the Louisiana Supreme Court, and the bond required by the said Chief Justice, in the sum of $200, duly approved by the said Chief Justice, will be found on pages 110 and 111 of the said typewritten record of the Supreme Court of Louisiana, a certified copy of which accompanies this application.

This application for a writ of certiorari to the Supreme Court of Louisiana is timely filed.

FEDERAL QUESTIONS IN THE COURTS BELOW

(a) In the Trial Court, and
(b) In the Louisiana Supreme Court

Petitioners claimed, in the above mentioned courts, their right to refuse to answer the said questions, claiming their constitutional immunity against self-incrimination under the Fifth and Fourteenth Amendments to the Constitution of the United States, because of fear of federal prosecution under the income tax laws of the United States of America and other federal laws, all felonies under the laws of the United States of America, and claimed that the answering of any such questions might tend to incriminate petitioners, or would afford a link in a chain of evidence which could become the basis of subsequent prosecutions under the laws of the United States of America.

Further, that petitioners were in actual and immediate danger of prosecution by the United States of America, under the income tax laws and other federal statutes, all felonies, and that petitioners were then, and had been, for some time under investigation by the investigating officers of the United States Internal Revenue Service and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951, inclusive; that petitioners had been required by the investigating officers of the United States Internal Revenue Service to sign waivers against prescription of and concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, etc; that the period of limitation on criminal prosecutions for offenses arising under the United States Internal Revenue laws is six years, (USC 26-6531) and that this period of time had not elapsed regarding petitioners' income tax returns; that there has existed, and then existed, co-operation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service for the United States of America and its investigators, as well as with the Police Bureau of the City of New Orleans, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and that Hon. Leon D. Hubert, Jr. District Attorney for the Parish of Orleans, had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department, and income tax evasions, felonies under the law of the United States of America and the State of Louisiana.

BASIS OF PETITIONERS' APPLICATION

(Federal Questions Involved)

The Federal questions involved, to-wit, deprivation of rights guaranteed petitioners under the Fifth and Fourteenth Amendments to the United States Constitution, as the record plainly shows, was timely raised in both the trial Court and in the Louisiana Supreme Court.

REASONS FOR GRANTING THE WRIT

It is respectfully submitted that the Supreme Court of Louisiana, the highest Court in the State, has decided a Federal question:

(a) By refusing to exercise its supervisory jurisdiction, through the issuance of the writs of certiorari, etc. applied for, so as to review petitioners' claim that they have been deprived of due process of law under the Fifth and Fourteenth Amendments to the United States Constitution, by rejecting petitioners' claim of privilege against self-incrimination, guaranteed petitioners by the said amendments.

The question presented to your Honors is this: Does a witness whose income tax returns are under investigation by the United States Internal Revenue Department — who has been summoned to appear before a State Grand Jury in an investigation into alleged police graft, have the right to refuse to answer such questions pertaining to the said graft investigation, because he fears that such answers may lead to his prosecution under the federal income tax laws, or other federal laws, or because such answers may afford a link in

a chain of evidence which could result in the prosecution of said witness for a violation of the income tax laws or other federal statutes?

The State District Attorney conducting such investigation, admits that there had existed, and at the time of the investigation, still existed, cooperation and collaboration between the said District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators * * * in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and the said District Attorney for the Parish of Orleans admitted that he had held conferences with the United States Attorney for the Eastern District of Louisiana, regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the laws of the United States of America and the State of Louisiana.

ARGUMENT

Petitioners are being required, under criminal penalty, by the Courts of Louisiana, to confess to having committed the corpus of a federal crime, or to deny the same.

The issue raised by petitioners herein is broader than the issue raised by the petitioner, Milton Knapp, against Mitchell D. Schweitzer, Judge of the Court of General Sessions and Frank S. Hogan, District Attorney of the County of New York, in case 189 (October term, 1957) of the docket of the Supreme Court of the United States, now under advisement by this Honorable Court.

In the Knapp case, petitioner contended that to answer the questions propounded before a New York Grand Jury might lead to petitioner's prosecution under the Taft-Hartley Act.

In this case petitioners contend that to answer the questions propounded before the Louisiana Grand Jury would lead to petitioners' prosecution for a violation of the United States income tax laws or other federal laws, all felonies, petitioners actually being under investigation by agents of the United States Internal Revenue Service concerning petitioners' income tax returns for the years 1948 to 1951, inclusive.

Further, it is stipulated in the record that the local District Attorney conducting the investigation into police graft before the State Grand Jury is acting in cooperation with the United States Attorney and agents of the United States Treasury Department in said investigation of violations of the United States income tax laws and other Federal Statutes.

We take the liberty of quoting the following from the brief filed by counsel for petitioner in the case of Milton Knapp against Mitchell D. Schweitzer, Judge of the Court of General Sessions, and Frank S. Hogan, District Attorney of the County of New York, respondents, No. 189 (October Term, 1957) of the docket of this Honorable Court: (Now under advisement)

"There can be no *cavil* about the reality of the Petitioner's jeopardy. The questions, if answered affirmatively, would establish the *corpus* of the federal crime. These are not *penumbral* questions; they raise dark and full blown the shadow of federal criminal conviction. There is here no limitation, and indeed, no possibility of limitation, as there was in *Jack* v. *Kansas*[2] of the questions, or of their incriminating possibilities which would keep them without the *ambit* of the federal criminal law. Nor can the dalliance or official inertia or "sportsmanship" of the federal prosecutor be presumed upon, as in *Jack v. Kansas*, for the record here shows a parallel effort on the part of the Federal Prosecutor concerned and the New York District Attorney to stamp out bribery of union officials. (R. 9, 99)

There is here no geographic remoteness nor extradition safeguard as in *King of Two Sicilies* v. *Willcox*;[3] nor an unimaginable use of a dormant legal weapon, as in *Queen* v. *Boyes*.[4] Nor was the instance court here without knowledge of law of the "other" jurisdiction, as in the *Willcox*[4A] case, for it was bound to take judicial notice of it.

Let it be observed also that Petitioner's testimony, if New York succeeds in extorting it from him, may not merely inspire the federal prosecution, but can, in that federal prosecution, be read against him verbatim.[5] Nor does the fact that New York has granted immunity to this Petitioner

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[2]199 U. S. 372.
[3]7 State Trials, N. S. 1050.
[4]1 B. & S. 311.
[4A]Cf. *U. S.* v. *MacRae*, 3 L. R. Ch. App. 79 explaining and limiting *Willcox*. In the *MacRae* case, the criminating law appeared on the face of the pleadings.
[5]*Feldman* v. *U. S.*, 322 U. S. 487

extinguish or make less remote the possibility of federal prosecution.[5A]

Faced with this tangible, proximate and undiminished peril of federal prosecution, petitioner asserts that he is protected in his refusal to answer by the Fifth Amendment.

> "No person . . . shall be compelled in any criminal case to be a witness against himself."

At the very least, this is a limitation on the Federal Government,[6] and by its terms a limitation on its prosecuting arm. It means, at minimum, that the citizen shall not be compelled

> ". . . in any [federal] criminal case . . ."

to give incriminating testimony. The Amendment is not less than a guaranty to him of safety against federal prosecution inspired by or based upon testimony wrung from him by compulsion.

The primary right conferred by the Amendment is a right to avoid federal prosecution. The right does not exist where the danger apprehended is not a danger of prosecution[7] and the right abates with the danger of prosecution however that may occur; whether by grant of immunity,[8] by pardon,[9] by the running of the statute of limi-

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[5A] *Ibid.*
[6] *Barron* v. *Baltimore*, 7 Pet. 243.
[7] *Ullman* v. *U. S.*, 350 U. S. 422.
[8] *Hale* v. *Henkel*, 201 U. S. 43.
[9] *Brown* v. *Walker*, 161 U. S. 591.

tations[10] or by former jeopardy.[11] But to produce an abatement of the right the abating event must be tailored to fit the danger of prosecution.[12]

The right then, is fundamentally a right to avoid a federal prosecution based upon compelled testimony. Only secondarily is it a right to decline to testify; the right to decline to testify is wholly ancillary to the right to avoid a prosecution stemming from the testimony.

This ancillary right to decline to testify is not confined to criminal prosecution wherein the witness is or is subject to being proceeded against. One need not be a defendant or prospective defendant to assert the right. A witness, as such, may claim the privilege. He may claim it in civil litigation.[13] He may claim it in administrative proceedings.[14] He may claim it before purely inquisitorial bodies such as Congressional Committees.[15] With sound reason, the law fears the creation of a tandem between inquisitor and prosecutor whereby a person may be compelled to feed the prosecutor to his own damnation.

It may thus safely be said that the right to decline to testify is independent of the function of the inquisitor. Be the function the adjustment of private rights, the restraint of the criminal, the dispatch of public business, the framing of new laws, it is all one so far as the Amendment is concerned — and all immaterial. The right is dependent on the

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[10] *Ibid.*
[11] *Ibid.*
[12] *Counselman v. Hitchcock*, 142 U. S. 547.
[13] *McCarthy* v. *Arndstein*, 266 U. S. 34.
[14] *Vajtauer* v. *Commissioner*, 273 U. S. 103.
[15] *Quinn* v. *U. S.*, 349 U. S. 155.

proximity of prosecution and not upon the color of the inquisitor's robe. It is assertable even where

> ". . . the proceedings give no warrant for thinking [the inquisitorial body is] attempting or intending to try [an individual] at its bar or before its committee for any crime or wrongdoing.[16]

The 'right of silence' is no "brooding omnipresence"; detached from the operations of the Federal Government; it is a definite limitation addressed to the action of a definite group of federal officials whose function is the prosecution of breaches of federal statutes, and wholly dependent upon and ancillary to the possible action of that group of federal officials; it is dependent upon them and not upon the source of the inquisition.

The Petitioner here now asserts the ancillary right of silence in a forum not of the central government's creation, but one bound, none the less, by federal organic law. He asserts that ancillary right of silence for the protection of his primary right to avoid federal prosecution based on compelled testimony.

What power lies in a state court as inquisitor which makes it superior to a Congressional Committee as inquisitor? Is not the same ancillary right involved? Does not the same primary right exist? And is not the ancillary right as federal in its origin as the primary right from which it springs? Is the state court, which has no prosecuting functions in the federal field, not on a par with a

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[16] *McGrain v. Daugherty*, 273 U. S. 135, 179-80

Congressional Committee which has no prosecuting functions? Or is it to be presumed that there is a closer nexus, a clearer channel of information between one arm of the federal government and another than between a state agency and a federal prosecutor, whereby the peril of the witness is increased?

The answer to these questions, say the respondents, is to be found in the so-called "two sovereignties" rule supposedly developed as to the matter of self-incrimination through such cases as *Brown* v. *Walker*,[17] *Jack* v. *Kansas*,[18] *Hale v. Henkel*,[19] *U. S.* v. *Murdock*[20] and *Feldman* v. *U. S.*[21] and recently, in another application (the related field of double jeopardy) so seriously questioned as to result in an affirmance by an equally divided Court. (*Bartkus* v. *Illinois*, No. 39 Oct. Term 1957 Decided January 6, 1958.) Petitioner respectfully asserts that the "two sovereignties" rule is a cumulus of fallacies at least as applied to the matter of self-incrimination.

Prior to the decision of *Brown* v. *Walker*, the only case decided by this Court involving federal-state relationships in the field of self-incrimination was *United States* v. *Saline Bank*, 1 Pet. 100, wherein a discovery sought in a federal court was held to be barred as calling for facts criminating under Virginia penal laws.

Brown v. *Walker* involved an objection that an immunity statute was not sufficiently broad to discharge the rights

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[17] 161 U. S. 591.
[18] 199 U. S. 372.
[19] 201 U. S. 43.
[20] 284 U. S. 141.
[21] 322 U. S. 487.

of a witness under the Fifth Amendment in that it did not encompass an immunity against crimes against the State of Pennsylvania. The majority (per Brown, J.), did not hold such an immunity unnecessary, but instead held the statute sufficiently broad to bar state prosecution:

> "... The act in question contains no suggestion that it is to be applied only to the Federal Courts. It declares broadly that ... 'no person shall be prosecuted ... for or on account of any transaction matter or thing, concerning which he may testify'."

Any residual risk of prosecution outside the federal jurisdiction was described, quoting *Queen* v. *Boyes*,[22] as an

> "... extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct."

and disposed of on the ground of remoteness. *Brown* v. *Walker* cannot properly be looked upon, therefore, as furnishing the root-stock for a "two sovereignties" doctrine.

Thus the rule stood until the 1905 term; the "two sovereignties" doctrine was no part of it. Proximity *vel* remoteness was the only consideration, the source of the peril, state or federal, was not a valid consideration. Then followed a series of three cryptic and, at least on the surface, mutually contradictory decisions, *Jack* v. *Kansas*,[23] *Ballman v. Fagin*[24] and *Hale* v. *Henkel*.[25]

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22 1 B. & S. 311; 21 Eng. Rep. 730.
23 199 U. S. 372.
24 200 U. S. 186.
25 201 U. S. 43.

Jack v. *Kansas* arose out of a state grand jury investigation into violations of its local anti-trust laws. The witness assailed the Kansas immunity statute as not affording protection against a Sherman Act prosecution. The Kansas courts, however, had held that inquiry into interstate transactions was not permissible and the record showed that the questions were, in fact, limited to local transactions. The majority, which included Holmes, said

> ". . . We do not believe that in such case there is any real danger of a federal prosecution, or that such evidence would be availed of by the Government for such purpose"

but followed up with the cryptic statement

> "We think the legal immunity is in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough."

Why, having found that the record would not support a claim of federal incrimination, the Court should make the latter comment is puzzling. Still more puzzling is the use made of the *Jack* case by Holmes in *Ballman* v. *Fagin*, discussed *post*. The *Jack* case is the only case to be entertained by this Court, prior to the case at bar, in which a claim of federal incrimination was asserted in a state court.

Ballman v. *Fagin*[26] was decided later in the same term.

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[26] 200 U. S. 186.

It held that a witness before a federal grand jury was protected in refusing to testify as to matters criminating under the bucket-shop statutes of Ohio; thus reasserting the *Saline Bank* rule. The opinion by Holmes cites *Jack* v. *Kansas* in support of the ruling, obviously interpreting that case as not supporting the "two sovereignties" doctrine.

Hale v. *Henkel* was argued at the same term. The major issue was the application of the privilege to corporations, but it was also contended that a corporate officer need not produce books and records before a federal grand jury when such evidence would tend to incriminate him under state law. The majority, without mentioning *Ballman* v. *Fagin*, disposed of the issue thusly:

> "The further suggestion that the statute offers no immunity from prosecution in the state courts was fully considered in *Brown* v. *Walker* and held to be no answer. The converse of this was also decided in Jack v. Kansas . . . namely, that the fact that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute, did not invalidate such statute under the Fourteenth Amendment. It was held . . . that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer . . . The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty . . ."

The reference to *Brown* v. *Walker,* while literally true, is made to carry the implication that the Federal Government has no concern about the possibility of state prosecution whereas the case actually rested on the supremacy clause.[27] And while *Jack* v. *Kansas* is, in result, a converse holding, considered in the light of its citation in the *Ballman* case, it falls short of holding that the state is unconcerned about the possibility of federal incrimination. To these errors of implication, there is added a misunderstanding of the English rule.[28] Curiously, the dissenting Justices, Brewer and Fuller, were under the impression that the majority has held merely that

> ". . . the immunity granted by the Federal statute is sufficient protection against both the Nation and the several states."

The next step in the development of the "two sovereignties" doctrine was taken in *U. S.* v. *Murdock.*[29] This was an indictment for wilful failure to furnish income tax information, against which a special plea had been filed setting up an exposure to incrimination under the gambling and possibly the bribery laws of Illinois. This Court, sustaining a demurrer to the plea, said

> "The principle established is that full and complete immunity against prosecution by the govern-

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[27]An interpretation reaffirmed in *Ullman* v. *U. S.*, 350 U. S. 422.
[28]The quotation is based on *King of the Two Sicilies* v. *Willcox*, 7 State Trials (N. S.) 1050, which was limited to its own peculiar facts by the decision in *United States* v. *McRae*, L. R. 3 Ch. App. 79 holding that an exposure to forfeiture by the law of the United States was a good plea in bar to an English discovery proceeding.
[29]284 U. S. 141.

> ment compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

Incongruously, however, it also relied on the supremacy clause:

> "Investigations for federal purposes may not be prevented by matters depending upon state law. Const. art. 6 §2."

The case repeats the error of *Hale* v. *Henkel* respecting the English law.

In *Feldman* v. *United States*,[30] a mail fraud defendant was convicted in a Federal court upon evidence of a check "kiting" scheme given by him under compulsion of a state immunity provision in a New York statutory creditors proceeding. If the holding is limited to deciding that New York could not by its immunity statute, immobilize a federal prosecution or control the evidence therein there is little question of its soundness. But the majority opinion seems to hold state and nation to be as far apart as England and Sicily for testimonial purposes. It leans heavily on the

> ". . . settled principle of our Constitution . . . that these (ten) Amendments protect only against invasion of civil liberties by the Government whose conduct they alone limit."

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[30]322 U. S. 487.

ignoring the obvious limitation that insofar as these Amendments create Federal rights in individuals, they impose the negative duty on states to refrain from interfering with individuals in the exercise of those rights.

Lyon v. *Mutual etc. Ass'n.*, 305 U. S. 484;
United States v. *Cruikshank*, 92 U. S. 542.

It further employs the questionable implications of *Jack* v. *Kansas*, *Hale* v. *Henkel* and *Murdock*, and subordinates the supremacy and remoteness grounds on which *Brown* v. *Walker* rested to the illustrative reference to "other sovereignty" contained in the language.

It should be remarked that the *Feldman* case is not dispositive of the issue in the case at bar. Feldman had not taken the one remedy open to him — that of resisting in the New York courts the disclosure of facts constituting a federal crime against which the New York statute could not immunize him. In the sense that he had not properly resisted New York's questions, he was not compelled to answer. It is one thing to hold New York's immunity unavailing; it is quite another thing to hold that New York may compel the giving of evidence of federal crime.

It is respectfully submitted that the "two sovereignties" doctrine is error. It is error in that it is founded in part upon a concept of the common law rule which is a false concept. It is error in that it is founded upon a misemphasized interpretation of *Brown* v. *Walker*. It is error in that it is founded upon a tunnel-visioned construction of *Barron* v. *Baltimore*. It is error in that it ignores the nature of the right conferred by the Fifth Amendment. It is error in that

it ignores the supremacy clause and its application in testimonial matters.

The true rule is not the "two sovereignties" rule but the rule of Federal supremacy, leaving to Congress and to the states the adjustment of such immunities as are necessary and expedient for the accomplishment of their proper social objectives, but respecting rights derived from the Federal Constitution to the extent that they are not displaced by proper immunities.

The right claimed by Petitioner here is a right deriving directly from the Fifth Amendment, the supreme law of the land. It is based on a primary right to avoid a federal prosecution springing from or furthered by his own compelled testimony. Ancillary to that primary right, is the right of silence, limited, of course, to the facts of federal import. As the primary right is federal, so the derivative right of silence is federal. As a federal right, the right of silence respecting federal crime is protected by the supremacy clause and the judges of New York are bound not to dishonor it.

The framers of the Ten Amendments, it may be conceded, were not writing a super-constitution for the states. But neither were they giving the citizen a shield against the acts of the federal government which could be stripped from him by the states in pursuit of their own ends. New York here seeks to strip this Petitioner of his shield against a federal prosecutor.

The Court will note that this argument in no wise questions the doctrine of *Twining* v. *New Jersey*[31] and *Adamson* v. *California*.[32] No general claim is made that the Fourteenth Amendment fastened upon the states the obligation to observe the restrictions of the Bill of Rights. If the questions here related solely to state-created offenses, as did the matters included in *Twining* and *Adamson*, Petitioner's position would be untenable, for his claim rests solely upon his rights vis-a-vis the Federal Government.

Nonetheless, there is a sense in which the Fourteenth Amendment is applicable here. Petitioner, not as a citizen of New York, but as a federal citizen, has a right of silence referrable to a federal prosecution. This would be a privilege or immunity of a citizen of the United States as such, which no state may abridge. The right is one of that limited class arising

> ". . . out of the nature and essential character of the federal government and granted or secured by the Constitution."[33]

Petitioner is in an anomalous and mystifying situation brought about by the divorce of law from realism and its casual flirtation with mere words. He stands between two governments each solemnly chanting that it is evil to convict upon extorted testimony while one seeks to extort and the other stands ready to use the extorted testimony to convict. Well might he say, 'Thou hypocrites!'."

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[31] 211 U. S. 78.
[32] 332 U. S. 46.
[33] *Duncan* v. *Missouri*, 152 U. S. 382; *Slaughterhouse* Cases 16 Wall. 36

CONCLUSION

For the foregoing reasons, we respectfully submit this petition for writ of certiorari should be granted.

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Counsel for Petitioners

ADDENDA

SUPREME COURT OF LOUISIANA

New Orleans

BY McCALEB, J.: March 3, 1958

State of Louisiana

v.

Henry J. Mills

and No. 43,939

State of Louisiana

v.

Osmond J. Litolff

In re: Henry J. Mills and Osmond J. Litolff applying for writs of certiorari, mandamus and prohibition

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Writs refused.

We find no error of law in the ruling complained of.

/s/ EHMcC
/s/ ALP
/s/ JBH
/s/ FWH
/s/ HAM

I respectfully dissent.
/s/ JDS

FILE COPY

FILED
SEP 30 1958
JAMES R. BROWNING, Clerk

Supreme Court of the United States

October Term, 1957

No. [redacted] 74

HENRY J. MILLS and
OSMOND J. LITOLFF,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 1035

HENRY J. MILLS and
OSMOND J. LITOLFF,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Memorandum in Support of Petition for a Writ of Certiorari to the Supreme Court of Louisiana

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

MAY IT PLEASE YOUR HONORS:

Since the filing of the petition for a writ of certiorari to the Supreme Court of the State of Louisiana in this matter, your Honors have decided the case of Milton Knapp, petitioner, vs. Mitchell D. Schweitzer, Judge of the Court of

General Sessions, and Frank S. Hogan, District Attorney of the City of New York, No. 189 (October Term, 1957) Vol. 78, No. 17, July 15, 1958, p. 1302 Supreme Court Reporter.

While your Honors in that case denied the application of petitioner and held that a witness who was granted immunity by a State against state prosecution may be compelled to testify in a state proceeding and cannot successfully assert the privilege against self-incrimination under the Fifth Amendment, and held that the sole purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal government to compel incriminating testimony, with a view to enabling that same government to convict a man out of his own mouth, your Honors specifically stated:

> "Of course the Federal Government may not take advantage of this recognition of the States' autonomy in order to evade the Bill of Rights. If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a federal prosecution, see Byars v. United States, 273 U.S. 28. Whether, in a case of such collaboration between state and federal officers, the defendant could successfully assert his privilege in the state proceeding, we need not now decide, for the record before us is barren of evidence that the State was used as an instrument of federal prosecution or investigation. Petitioner's assertion that a federal prosecuting attorney announced his intention of cooperating with

> state officials in the prosecution of cases in a general field of criminal law presents a situation devoid of legal significance as a joint state and federal endeavor."

We respectfully submit that the petition filed by the present petitioners definitely and positively shows that one of the Federal officers, to-wit: the United States Attorney for the Eastern District of Louisiana, is a party to the compulsion of testimony by a State agency, viz: the Grand Jury of the Parish of Orleans, out of the mouths of petitioners, which could be used against petitioners in a Federal prosecution, which might result against petitioners for violating a Federal statute or statutes.

The record herein shows that the District Attorney of the Parish of Orleans, the legal adviser of the Grand Jury for the Parish of Orleans, stipulated and agreed, among other things, that certain facts should be considered as evidence in lieu of the taking of testimony on the hearing of the rule for contempt before the State Court.

Among the facts stipulated and agreed upon as evidence (See par. 7 of Stipulation "C" regarding petitioner Osmond J. Litolff, p. 53 of the printed record of the Supreme Court of Louisiana, and see par. 7 of the Stipulation as to petitioner Henry J. Mills, p. 46 of the printed record of the Supreme Court of the State of Louisiana) was the fact that there existed and did exist at the time the said Grand Jury hearing was being held — cooperation and collaboration between the District Attorney for the Parish of Orleans: Hon. Leon D Hubert, Jr., and the United States Attorney for the Eastern District of Louisiana, and the Internal Revenue

Service of the United States of America, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and that Hon. Leon D. Hubert, Jr., District Attorney of the Parish of Orleans, had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department, and income tax evasions, felonies under the laws of the United States of America and the State of Louisiana.

The record also shows that it was further stipulated and agreed that petitioners were then under investigation by agents of the United States Department of Internal Revenue Service and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, and that petitioners had been required by investigating officers of the United States Internal Revenue Service to sign waivers against prescription of, and concerning, petitioners' income tax returns for the years 1948 to 1951, inclusive, so as to afford such investigating officers of the United States Internal Revenue Service and other officials of the United States government an opportunity to proceed against petitioners for any violation of the income tax laws or other Federal statutes, which said investigating officers would claim petitioners had violated, the statutory period of limitation of criminal prosecutions for offenses under the United States Internal Revenue laws (6 years) — (U. S. Code, Title 26, p. 6531) not having elapsed regarding petitioners' income tax returns.

We respectfully contend that, in view of the above, your Honors' decision in Knapp vs. Schweitzer, supra, bars the

use of such testimony in a Federal prosecution. (See Byars v. U.S. 273, U.S. 28).

Petitioners, therefore, respectfully claim the protection of the Fifth Amendment against being compelled to incriminate themselves before the Grand Jury of the Parish of Orleans, State of Louisiana, and claim the benefit of this Amendment against the punishment for contempt inflicted upon them in the State Court, and respectfully petition this Honorable Court to set aside and annul the judgment of the Criminal District Court of the Parish of Orleans, State of Louisiana, finding them guilty of contempt of Court.

Respectfully submitted,

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Albert B. Koorie
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New Orleans, La.
Counsel for Petitioners

CERTIFICATE

I certify that copies of the foregoing brief have been served upon opposing counsel of record by placing the same properly addressed in the United States mail with adequate postage affixed thereto.

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Supreme Court of the United States

OCTOBER TERM, 1958

No. 74

HENRY J. MILLS and OSMOND J. LITOLFF,
Petitioners,

versus

STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR PETITIONERS.

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SUPREME COURT OF THE UNITED STATES

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STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR PETITIONERS.

OPINIONS BELOW

The opinion of the Supreme Court of Louisiana, rejecting and denying petitioners' application for writs of certiorari, mandamus and prohibition has not been published in any official or unofficial reports.

The written opinion of the Supreme Court of Louisiana, denying petitioners' application for writs, as recorded in the minutes of the Court, will be found on page 97 of the typewritten record of the Supreme Court of Louisiana and on page 97 of the printed record.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Title 28 U. S. Code, Section 1257 (3) because petitioners contend that they have been denied rights, privileges, and immunities guaranteed them by the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

QUESTIONS PRESENTED FOR REVIEW

That the Supreme Court of Louisiana erred in refusing to issue the writs of certiorari, mandamus and prohibition prayed for and erred in failing to annul and set aside the judgments and sentences for contempt against petitioners, and erred in failing to hold that petitioners were legally justified in claiming their privilege against self-incrimination under the Fifth and Fourteenth Amendments to the Constitution of the United States of America, when called as witnesses before the Grand Jury of the Parish of Orleans, because:

(a) In answering such questions, such answers would incriminate them or tend to incriminate them, or would afford a link in a chain of evidence which would become the basis of subsequent prosecutions under the laws of the United States of America, or which could lead to the discovery of evidence which could be made the basis of criminal prosecutions against petitioners for violating the income tax law (and other statutes) of the United States of America.

and further, because:

(b) The District Attorney of the Parish of Orleans, who is the legal adviser of the Grand Jury for the Parish of Orleans, and who was the officer who would interrogate witnesses appearing before the said Grand Jury, *in the stipulation entered into* by and between the said District Attorney and Eugene Stanley, attorney for petitioners, *agreed and stipulated*, among other things, *that certain facts should be considered as evidence* herein in lieu of the taking of testimony on the hearing of the rule for contempt, *and among the said facts to be considered as evidence* without the necessity of taking formal testimony thereon (see par. 7 of Stipulation "C" regarding petitioner Osmond J. Litolff, page 53 of the record of the Supreme Court of Louisiana and page 53 of the printed record, and see par. 7 of the Stipulation as to petitioner Henry J. Mills, page 46 of the record of the Supreme Court of the State of Louisiana and page 45 of the printed record) *was the fact that there existed and did exist at the time the said Grand Jury hearing was being held co-operation and collaboration between the District Attorney for the Parish of Orleans, Hon. Leon D. Hubert, Jr., and the United States Attorney for the Eastern District of Louisiana, and the Internal Revenue Service of the United States of America, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that Hon. Leon D. Hubert, Jr., District Attorney for the Parish of Orleans,*

had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasions, felonies under the laws of the United States of America and the State of Louisiana.

Further, that petitioners were then under investigation by agents of the United States Department of Internal Revenue and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, and petitioners had been required by the investigating officers of the United States to sign waivers against prescription of, and concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, so as to afford such investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against petitioners for any violation of the income tax laws or other federal statutes which said investigating officers would claim petitioners had violated, the statutory period of limitation on criminal prosecutions for offenses under the United States Internal Revenue laws (six years) (U. S. Code Title 26-6531) not having elapsed regarding petitioners' income tax returns. (See page 44 of the printed record as to petitioner Mills and page 52 of the printed record as to petitioner Litolff).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution of the United States reading in part, as follows:

> " • • • nor shall he be compelled in any criminal case to be a witness against himself" (U. S. Constitution, Amendment V) and
>
> " • • • nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (U. S. Constitution, Amendment XIV).

STATEMENT OF THE CASE

Petitioners, Henry J. Mills and Osmond J. Litolff, on January 22, 1958, were subpoenaed as witnesses before the Grand Jury of the Parish of Orleans and an attempt was made by the District Attorney for the Parish of Orleans to interrogate petitioners, under oath, regarding the current political bribery and income tax evasion by members of the New Orleans Police Department, and others, and petitioners, at that time, on advice of counsel, refused to answer such questions, claiming their constitutional right against self-incrimination under the Constitution of the State of Louisiana (Section 11 of Article One and Section 13 of Article 19) and under the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Petitioners, in refusing to answer such questions, (see page 43 et seq. of the printed record as to petitioner Mills and page 51 et seq. of the printed record as to petitioner Litolff) expressed a fear of federal prosecution under the income tax laws of the United States and other federal laws, all felonies, invoking the constitutional provisions above mentioned, because to answer such questions would incriminate, or tend to incriminate them or would afford a link in a chain of evidence which could become the basis of subsequent prosecutions under the laws of the United States of America, or could lead to the discovery of evidence which could be made the basis of criminal prosecutions against petitioners for violating the laws of the State of Louisiana, and or the laws of the United States of America, etc.

Petitioners further contended they were in actual and immediate danger of prosecution by the United States of America, under the income tax law and other federal laws, all felonies, because they were under investigation by the investigating officers of the United States Internal Revenue Department and other United States officials concerning petitioners' income tax returns for the years 1948 and 1951, inclusive, and that the period of limitation on criminal prosecutions for offenses arising under the U. S. Internal Revenue Laws -- six years — had not elapsed regarding petitioners' income tax returns.

Photostatic copies of the waivers signed by petitioner, Osmond J. Litolff, and his wife, for the above years, will be found on pages 71 to 74, inclusive, of the typewritten record of the Louisiana Supreme Court (page 52 et seq. of the printed record), and photostatic copies of the waivers as to pe-

tioner, Henry Mills, signed by the said Henry Mills and his wife, will be found on pages 75 and 78, inclusive, of the typewritten record of the Louisiana Supreme Court (page 44 et seq. of the printed record), and a letter from the United States Treasury Department, Internal Revenue Service, to Petitioner Henry Mills and his wife, acknowledging receipt of the consent waivers above mentioned, will be found on page 79 of the typewritten record of the Louisiana Supreme Court, page 81 of the printed record.

The reasons of the Trial Judge for refusing to uphold petitioners' claim against self-incrimination under the Fifth and Fourteenth Amendments to the United States Constitution will be found on pages 82 to 89 of the typewritten record of the Louisiana Supreme Court, pages 83 to 91 of the printed record.

The judgment of the trial judge finding petitioners guilty of contempt of court and sentencing each of petitioners to pay a fine of $100 and to serve ten days in the Parish Prison of the City of New Orleans and in default of the payment of said fine to serve ten days additional in the said Parish prison, will be found on pages 94 and 95 of the typewritten record of the Louisiana Supreme Court, and on pages 95 and 96 of the printed record.

Petitioners, after having given due notice to the trial Judge and the District Attorney of petitioners' intention to apply to the Louisiana Supreme Court for writs of certiorari, mandamus and prohibition to review the judgment and sentences finding petitioners guilty of contempt and sentencing them as above set out, filed their application for such writs in the Louisiana Supreme Court.

This application will be found on pages 1 to 22 of the typewritten record of the Louisiana Supreme Court and on pages 1 to 21 of the printed record.

The judgment of the Louisiana Supreme Court denying petitioners' application, and refusing to issue the writs of certiorari, mandamus and prohibition prayed for, will be found on page 97 of the typewritten record of the Louisiana Supreme Court, and on page 97 of the printed record.

Petitioners' application to the Louisiana Supreme Court for a stay of execution, in order to apply to this Honorable Court for a writ of certiorari to the Louisiana Supreme Court will be found on pages 98 of the typewritten record of the Louisiana Supreme Court, and on page 98 of the printed record.

The Order of Hon. John B. Fournet, Chief Justice of the Louisiana Supreme Court, granting petitioners a stay of execution of the mandate of the Louisiana Supreme Court upon petitioners furnishing bond in the sum of $200, (said order being dated March 4, 1958), will be found on page 101 of the typewritten record of the Louisiana Supreme Court, and on page 100 of the printed record, and the bond required by the said Chief Justice, in the sum of $200, duly approved by the said Chief Justice, will be found on pages 110 and 111 of the said typewritten record of the Supreme Court of Louisiana.

The federal questions involved were properly raised by petitioners and passed upon,

(a) In the Trial Court, and

(b) In the Louisiana Supreme Court

and petitioners have exhausted every remedy allowed them under the laws of Louisiana.

ARGUMENT

We believe it to be settled law that a witness called before a Federal Grand Jury has the right to refuse to answer questions that incriminate, or might tend to incriminate him, or subject him to prosecution for the violation of a federal statute; that the provisions of the Fifth Amendment which provide, in part;

> " * * * that no person * * * shall be compelled in any criminal prosecution to be a witness against himself,"

must be accorded liberal construction in favor of the right it was intended to secure.

That the privilege so afforded not only extends to answers that would in themselves support a conviction under a federal statute, but likewise embraces those which would furnish a link in a chain of evidence needed to prosecute the claimant for a federal crime, etc. (See Hoffman vs. U. S., 371 U. S. 479, 341 U. S. 479, 490 95th L. Ed. 1118 and cases cited therein)

We are not unmindful of the fact that this Honorable Court has held that the privilege against self-incrimination provided for by the Fifth Amendment protects only against

the invasion of civil liberties by the government whose conduct they alone limit, and that a state cannot, by operating within its constitutional powers restrict the operations of the national government within its sphere (see Feldman vs. U. S., 322 U. S. 487, 88 L. Ed. 1408, citing Barron vs. Baltimore, 7 Pet. (U. S.) 243, 8 L. Ed. 672, Brown vs. Walker, 161 U. S. 591, 40 L. Ed. 819, 16 S. Ct. 644, Jack vs. Kansas, 199 U. S. 372, 50 L. Ed. 234, 26 S. Ct. 73, 4 Ann. cases 689, U. S. vs. Murdock, 284 U. S. 141, 76 L. Ed. 210, 52 S. Ct. 63.

In an article in the Temple University Law Quarterly, volume 9, page 57 and page 194 (1934-5) by Professor J. A. C. Grant, entitled "Immunity From Compulsory Self-Incrimination in a Federal System of Government," the doctrine of the "two sovereignities rule" is traced and described. (See, also, "Federalism and Self-Incrimination" U.C.L.A. Law Review, Volume 4, 1956-57 by Professor J. A. C. Grant passing upon the federal aspects of the question).

Professor Grant states, on page 58 of the reports of the Temple Law Quarterly, that starting with Brown vs. Walker, supra, the reports are replete with cases in which witnesses have set up the defense that their testimony would incriminate them under the laws of another sovereignty and that prior to that date he had discovered but a single American decision (U. S. vs. Saline Bank of Virginia, 1 Pet. 100, U. S. 1828) on this point.

Professor Grant states that Brown vs. Walker, supra, proved to be the turning point in breaking away from the doctrine of the United States vs. Saline Bank.

In the Saline Bank case the defendants' plea in bar, alleging that the discovery would subject them to penalties under the statutes of Virginia which prohibited the issuance of certain bank notes, was upheld, Chief Justice Marshall stating that "the rule clearly is that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

Summarizing the situation, Professor Grant states, on page 69 of the Law Quarterly article, that the Federal Supreme Court in two decisions (U.S. vs. Saline Bank, supra and Ballmann vs. Fagin, 200 U. S. 186 (1906) had definitely held that the national government cannot require a witness to give evidence that will tend to incriminate him under a state law and that the trial courts in numerous cases had made similar rulings and that a New York judge had applied a corresponding rule to state proceedings (see in re Scott, 95 Fed. 818 (1899); in re: Hess, 134 Fed. 109 (1905); In re: Nachman, 114 Fed. 995 (1902); In re: Kanter, 117 Fed. 356 (1902); In re: Hooks Smelting Co., 138 Fed. 954 (1905); In re: Feldstein, 103 Fed. 269 (1900); The Paper Trust Case, unreported, quoted in Brief for appellant, 62 Hale vs. Henkel, 201 U. S. 43 (1906); People vs. Nussbaum, 55 App. Div. 245 67 N.Y. Supp. 492 (1900).

In addition to the cases cited by Professor Grant, we respectfully cite the following cases wherein state courts have held that the privilege of a witness against self-incrimination accorded by the State Constitution extends to protect such witness from testifying as to matters that might tend to

incriminate him in a federal prosecution under a law of the United States:

> People vs. Den Uyl, 318 Mich. 645, 2 ALR 2d 625
> In re: Watson, 293 Mich. 263, 284, 219 N. W. 652
> State vs. Dominguez, 82 So. (2d) page 12, 228 La. 284
> State vs. Doran, 39 So. 2d 894, 215 La. page 151
> State vs. Kelly, 71 So. (2d) 887 (Fla.)

In Marcello vs. U. S., 196 Fed. 2d 437 (1952) (U.S.C.A. 5th Circuit) his Honor, Judge Rives, Circuit Judge, cited with approval, the case of People vs. Den Uyl, supra and stated:

> "With much inconsistency, we may indulge the hope that more state courts will follow the lead of the Supreme Court of Michigan in the view that it seems like a travesty on verity to say that one is not subjected to self-incrimination when compelled to give testimony in a state judicial proceeding, which testimony may forthwith be used against him in a federal criminal prosecution."

On page 442 of the Marcello decision, Judge Rives reviewed the jurisprudence on the question of the privilege against self-incrimination and cited U. S. vs. Saline Bank, supra and the opinion of Mr. Justice Holmes in Ballmann vs. Fagan, supra.

Judge Rives frankly admitted that as a Circuit Judge he was bound by the jurisprudence of your honors in U. S. vs. Murdock, supra and Feldman vs. U. S., supra and stated that the doctrine enunciated in these last two cases was so

strongly entrenched that it appears as futile to protest as it is to expect an individual to feel that his constitutional privilege has been safeguarded because the penitentiary into which his answer may land him is under the supervision of the state instead of the federal government.

Judge Rives further stated (page 443) that the Supreme Court, but not his court, may well pause when it considers how far the privilege intended against self-incrimination has been abandoned when a congressional committee is given unlimited power to investigate state crimes to identify the criminals and that such a witness might be confronted with the necessity of choosing one of three courses:

1. Refusing to answer, thereby risking a conviction for contempt;

2. Committing perjury; or

3. Confessing his guilt to a crime against the state.

Judge Rives further pointed out in the Marcello decision that a method by which the privilege against self-incrimination may be completely circumvented suggests itself when we consider that state tribunals may pursue a like course with reference to criminal offenses against the federal government.

(See Poretto vs. U. S., 196 Fed. (2) 392 5th Circuit-USCA)

We respectfully submit that the merits of petitioners' application for relief to your honors against being punished for

contempt do not necessarily involve a departure by your honors from the doctrine of the two sovereignties, above described, and the acceptance of the broader doctrine that the intent of the Fifth Amendment is to prevent a person from being compelled to put himself either in a state penitentiary or a federal penitentiary through forced admissions and the answering of questions which tend to prove him guilty of a federal or state crime.

We respectfully submit that the factual situation in petitioners' application, as disclosed by the record herein, shows that the federal government, through the United States Attorney for the Eastern District of Louisiana, has attempted to do in this case what your honors stated a U. S. Attorney should not attempt to do in Knapp vs. Schweitzer, 78 S. Ct. Reporter, 1302 — July 15, 1958, that is, "take advantage of the state's autonomy in order to evade the Bill of Rights."

Your Honors stated on page 1308 of that decision that if a federal officer should be a party to the compulsion of testimony by a state agency, the protection of the Fifth Amendment would come into play and that such testimony is barred in a federal prosecution, citing Byars vs. U. S., 273 U. S. 28, 47 S. Ct. 248, 71 L. Ed. 520.

Your Honors were not called upon to pass upon the question of collaboration between state and federal officers in Knapp vs. Schweitzer, supra, the record in that case, your honors stating, being barren of evidence that the state was used as an instrument of federal prosecution or investigation.

The facts in this case are entirely different.

The statement of facts as to both petitioners (page 38 of printed record as to the petitioner Mills and page 46 of the printed record as to the petitioner Litolff, paragraph 7 of the printed record, page 45 as to petitioner Mills and paragraph 7 of the printed record page 53 as to the petitioner Litolff) show that the District Attorney of the Parish of Orleans, who conducted the interrogation of petitioners before the State Grand Jury, admitted that there existed cooperation and collaboration between said District Attorney and the United States Attorney for the Eastern District of Louisiana, as well as cooperation and collaboration between said District Attorney and the Internal Revenue Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasions and that said District Attorney for the Parish of Orleans had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasions, felonies under the laws of the United States of America and the State of Louisiana.

The stipulation between counsel for petitioners and the said District Attorney, in addition to the above admissions, shows (printed record page 43 as to petitioner Mills and printed record page 51 as to petitioner Litolff) that as a reason for claiming the privileges granted them under the Fifth and Fourteenth Amendments to the Constitution of the United States was petitioners fear of federal prosecution under the income tax laws of the United States and

other federal laws, all felonies under the laws of the United States of America, etc.

That petitioners felt that they were in actual and immediate danger of prosecution by the United States of America under the income tax laws and other federal laws, all felonies, in that they were then and had been for some time under investigation by the investigating officers of the United States Internal Revenue Service and other United States officials concerning income tax returns for the years 1948 to 1956 inclusive.

That they had been required by such investigating officers to sign waivers against prescription of and concerning their income tax returns for those years, so as to afford the investigating officers of the United States Internal Revenue Service and other officials of the United States Government an opportunity to proceed against petitioners for any violation of the income tax laws, or other federal statutes, which the said investigating officers should claim petitioners had violated.

That the period of limitation on criminal prosecutions for offenses arising under the United States Internal Revenue Laws is six years (U.S.C.A. 26 — 6531) and that this period of time had not elapsed regarding their income tax returns.

That (see page 44 of the printed record as to petitioner Mills and page 52 of the printed record as to petitioner Litolff) the record contains four documents as to each of the petitioners entitled, "Consent fixing period of limitation upon assessment of income and profits tax."

The stipulation further shows (page 45 of the printed record as to petitioner Mills and page 53 of the printed record as to petitioner Litolff) that the Intelligence division of the Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury had been for several months and were presently engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States, and that great publicity through the daily newspapers, television and radio had been carried on for several months regarding said investigation.

That eleven indictments had been returned by the United States Grand Jury against members of the New Orleans Police Department in connection with the aforementioned investigations; three for income tax evasion and eight for perjury or false statements.

From the above facts, which will be found in the record, we respectfully submit that petitioners had ample justification for a fear that a forced disclosure before the State Grand Jury of the facts sought to be elicited from them by the District Attorney for the Parish of Orleans would result in the indictment of petitioners by the United States Grand Jury for the Eastern District of Louisiana and a trial for a felony or felonies under the laws of the United States of America.

For all intents and purposes, the United States Attorney for the Eastern District of Louisiana might just as well himself conducted the investigation before the State Grand Jury for the Parish of Orleans.

He did not dare do this personally, because of his official position as a federal prosecutor. He attempted to do indirectly what the laws of the United States prevent him from doing directly, and he sought to do this by not only himself collaborating with the District Attorney for the Parish of Orleans, but by having the agents of the United States Treasury Department, to-wit, the Intelligence Division of the Internal Revenue Service, collaborate with the District Attorney for the Parish of Orleans, in an effort to force from the lips of petitioners facts and evidence which could form the basis of prosecutions against petitioners in the District Court of the United States for the Eastern District of Louisiana.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of the Supreme Court of Louisiana should be reversed and the cause remanded in order that petitioners be discharged without date.

Respectfully submitted,

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CERTIFICATE

I certify that copies of the foregoing brief have been served upon opposing counsel of record by placing the same properly addressed in the United States mail with adequate postage affixed thereto.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

No. 74

HENRY J. MILLS
OSMOND J. LITOLFF,

Petitioners,

versus

STATE OF LOUISIANA

ON WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

SUPPLEMENTAL BRIEF FOR PETITIONERS

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Summary of Argument:

Where the record shows that the District Attorney for the Parish of Orleans, State of Louisiana, interrogating petitioners before a State Grand Jury, admitted collaborating and co-operating with the U. S. Attorney for the Eastern District of Louisiana and the agents of the U. S. Internal Revenue Service regarding public bribery and income tax evasions, and had held conferences with such U. S. Attorney regarding public bribery and income tax evasions on the part of certain individuals then under investigation, felonies under the laws of the United States, said District Attorney for the Parish of Orleans, La.—a state official—was, to all intents and purposes, performing a federal function and is then regarded as a federal officer, subject to federal limitations and standard of conduct

If such District Attorney attempts to compel testimony from persons summoned before a State Grand Jury regarding the matters then being investigated, such witnesses are entitled to claim the protection of the Fifth Amendment to the U. S. Constitution

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SUPPLEMENTAL BRIEF FOR PETITIONER

ARGUMENT

In our original brief (pages 13 and 14) we respectfully pointed out to your Honors that to grant petitioners relief from the sentences imposed upon them for contempt of court did not necessarily involve a departure from your Honors previous doctrine of the two sovereignties rule (Feldman vs. U. S.; Barron vs. Baltimore, Brown vs. Walker, Jack vs. Kansas, U. S. vs. Murdock—cited on page 10 of our original brief).

While cases cited for the proposition that one jurisdiction need not protect against the threat of prosecution in another jurisdiction when it compels a witness to testify

in a proceeding, it is significant that the facts in each one of the above mentioned cases clearly indicate that there was, in fact, no substantial threat of prosecution in any other jurisdiction.

Where such a threat did exist, "one way or another", the witness was protected from incriminating himself in the second jurisdiction:

Ballman vs. Fagan, 200 U. S. 186
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In re Cantor, et al, 117 F. 356
Marcello vs. U. S. 196 F. 2d 437.

The factual situation as shown by the record herein (see printed record page 38 et seq. as to petitioner Mills—original record page 38 et seq. and printed record page 46 et seq., original record page 47 et seq. as to petitioner Litolff) shows cooperation and collaboration between the District Attorney for the Parish of Orleans, who examined petitioners before the State Grand Jury, and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators (printed record page 45 as to petitioner Mills and printed record page 53 as to petitioner Litolff) in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and shows that Honorable Leon D. Hubert, Jr., District Attorney of the Parish of Orleans, had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police

Department and income tax evasion, felonies under the laws of the United States of America and the State of Louisiana.

The factual situation in this case is entirely different from that which existed in Knapp vs. Schweitzer, 357 U. S. 371 78 S. Ct. Reporter 1302, wherein your Honors stated that the record failed to disclose any collaboration between state and federal officers and failed to show that the State was being used as an instrument of federal prosecution or investigation.

We respectfully submit that in this case there is abundant evidence in the record that the federal government, through the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and the agents thereof, were working in active collaboration and cooperation with Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, who was in charge of the investigation before the Grand Jury for the Parish of Orleans, State of Louisiana.

That the United States Attorney for the Eastern District of Louisiana and the agents of the United States Internal Revenue Service were doing exactly what his Honor Mr. Justice Frankfurter, in Knapp vs. Schweitzer supra, said agents of the federal government should not do, that is, "taking advantage of the recognition of the States' autonomy in order to evade the Bill of Rights" and "if a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a fed-

eral prosecution," citing Byars vs. U. S. 273 U. S. 28, 47 S. Ct. 248, 71 Law Ed 520.

Not only under such circumstances is Byars vs. U. S., supra, authority for the exclusion of such testimony, but a host of other cases can be cited in support of this doctrine.

In an article published in the Yale Law Journal (Dec. 1958) volume 68, page 322, et seq. entitled "Use of State Compelled, Self Incriminating Testimony in Federal Court", Knapp vs. Schweitzer, supra, is discussed.

On page 327 of this Law Journal we find the following:

> "Since few States construe their constitutions to permit a witness to remain silent in the face of federal prosecution, Feldman may frequently enable the government to evade the privilege against self-incrimination. Seeking to exploit that decision, federal authorities might prosecute a witness previously called before state proceedings in which answers were compelled sufficient to establish his guilt in a subsequent federal trial. The government might even have inspired the State interrogation, for cooperation is quite common and collusion not unknown between federal and state officials. Furthermore, the latter could on their own initiative institute inquiries designed to further federal prosecutions."

(See cases cited under note 30, page 327 and notes 31, 32, 33 and 34 on page 328)

As a matter of fact, in this case, the District Attorney for the Parish of Orleans was to all intents and purposes, although a state official, performing a federal function and such state official is then regarded as a federal officer subject to federal limitations and standard of conduct.

In the Harvard Law Review, Volume 70—1956-1957, page 1463, it is stated that while a witness can be prosecuted in the federal courts for a crime he has admitted under compulsion of a state immunity statute (U. S. vs. Murdock 284 U. S. 141—1931)—but see U. S. vs. DiCarlo 102 Fed. Supp. 597 (N. D. Ohio—1952) in note 65 commenting on Feldman v. U. S. 322 U. S. 487, it is stated "however, prosecution would probably be barred if there were evidence of collusion between federal and state officials in procuring the testimony. Id at 492-4 dictum." In Feldman v. U. S. supra, p. 494, it is stated "If a federal agency were to use a state court as an instrument for compelling disclosures for federal purposes, the doctrine of the Byars case, supra, as well as that of McNabb vs. U. S. 318 U. S. 332 afford adequate resources against such an evasive disregard of the privilege against self-incrimination".

(See U. S. vs. Saline Bank, 1 Pet. 100; U. S. vs. McRae L. R. 3 Ch. App. 7.

See Cornell Law Quarterly, Vol. 30 (1944-45) page 255 et seq.

In the dissenting opinion of his Honor Mr. Justice Black, with whom his Honor, Mr. Justice Douglas, joined, in Knapp v. Schweitzer, supra, Mr. Justice Black stated that the untenability of the premises upon which the court

relied in Feldman, supra, has been clearly revealed in a series of penetrating law review articles by Professor J. A. C. Grant. (Immunity from compulsory self-incrimination in a federal system of government, 9 Temple Law Quarterly 57, (1934); Federalism and Self-Incrimination, 4 UCLA Law Review 549 Id. 1)

The second part of Professor Grant's article "Federalism and Self-Incrimination" will be found in volume 5 No. 1 of the U.C.L.A. Law Review—January 1958.

In this second part of the subject matter, Professor Grant presents a review of the study of the English Common Law on the doctrine of the dual sovereignties.

The summary and conclusions of Professor Grant will be found on pages 21-25 of Volume 5 No. 1 of the UCLA Law Review, and Professor Grant contends that the "Dual Sovereignty" theory can claim nothing from the Founding Fathers, virtually nothing from the English Common Law, and surprisingly little from American precedent prior to the Twentieth Century.

While we believe that your Honors can dispose of petitioners application and grant petitioners the relief sought because of the existence of the collaboration and cooperation between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the agents of the United States Department of Internal Revenue, we respectfully submit for your Honors consideration the reasons advanced by Professor Grant in his splendid article why the "Dual Sovereignty Rule" should be abrogated and departed from.

CONCLUSION

For the reasons advanced in our original brief, as supplemented in this supplemental brief, it is respectfully submitted that the judgment of the Supreme Court of Louisiana should be reversed and the cause remanded in order that petitioners be discharged without date.

Respectfully submitted

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CERTIFICATE

I certify that copies of the foregoing brief have been served upon oppsing counsel of record by placing the same properly addressed in the United States mail with adequate postage affixed thereto.

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JAMES R. BROWNING,

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 74

HENRY J. MILLS AND OSMOND J. LITOLFF,
PETITIONERS,

v.

STATE OF LOUISIANA

No. 75

AUGUST J. MILLS, SR.,
PETITIONER,

v.

STATE OF LOUISIANA,
RESPONDENT

On Writs of Certiorari to the Supreme Court of Louisiana

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STATE OF LOUISIANA

No. 75

AUGUST J. MILLS, SR.,
PETITIONER,

v.

STATE OF LOUISIANA,
RESPONDENT

On Writs of Certiorari to the Supreme Court of Louisiana

Brief for Respondent

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

May It Please Your Honors:

ARGUMENT

Respondent respectfully submits that your Honors' ruling in the case of *Milton Knapp v. Mitchell D. Schweitzer*, No. 189 (October Term, 1957), Vol. 78, No. 17, July 15, 1958, p. 1302, Supreme Court Re-

porter, 357 U.S. 371, 2 L.Ed. 1393, is applicable to the case at bar, since the record does not disclose any evidence of collaboration or cooperation between State and Federal officers in the investigation of petitioners' activities by the Grand Jury of Orleans Parish, State of Louisiana. Careful reading of the stipulations between the District Attorney of the Parish of Orleans and the petitioners (see pp. 46 and 53 of the printed record of the Supreme Court of the State of Louisiana) produces neither the fact nor the inference that the District Attorney for Orleans Parish was being used as an instrument of Federal prosecution or investigation.

The only cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States was in reference *to members of the New Orleans Police Department* regarding public bribery and income tax evasion. The District Attorney further stipulated that he had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery and income tax evasion *on the part of certain members of the New Orleans Police Department.*

The record fails to disclose that the petitioners are members of the New Orleans Police Department, and, in fact, they are not. Had the District Attorney for Orleans Parish and the United States Attorney for the Eastern District of Louisiana or any member

of the Internal Revenue Service of the United States by actual design collaborated or combined to investigate or prosecute the defendants, the fairer inference is that this activity would have been detailed and specified in the stipulations referred to above. But since these officers of the State of Louisiana and the Federal government did discuss the possibility that certain members of the New Orleans Police Department may have engaged in public bribery and income tax evasion, the petitioners would have you infer that they were some how related to these conferences, since they too happened to be at the same period of time under investigation by the Grand Jury of Orleans Parish for public bribery. It is submitted that such an inference is entirely unsupported by any evidence in this record.

The waivers signed by the petitioners fixing by consent the period of limitation upon assessment of income tax and profits tax (re Mr. and Mrs. Osmond I. Litolff, see folio 71, print 70, and re Mr. and Mrs. Henry Mills, see folio 75, print 75) are dated *May 8, 1957* and were signed by the defendants on or about *May 13, 1957*, fully eight months prior to the date that petitioners refused to testify before the Grand Jury of Orleans Parish. It hardly can be argued that the securing of these waivers was part of any collaboration between the District Attorney for Orleans Parish and Federal authorities to obtain the investigation or prosecution of the petitioners.

The case at bar would stand on all fours with

Knapp v. Schweitzer, supra, were it not for the following divergence of facts:

In *Knapp v. Schweitzer*, supra, there is no evidence that the petitioner was under investigation by any Federal agency for a violation of the Federal criminal law at the time he refused to accept State immunity and to testify before State authorities. In the instant case, it is true that the petitioners were being investigated by the Internal Revenue Service of the United States for possible income tax evasion at the time they were called upon and refused to accept immunity and to testify for the Orleans Parish Grand Jury. However, respondents contend that this difference in facts is not material to your Honors' decision today.

It is respectfully suggested that the factual distinctions between the case before you today and those in *State v. Dominguez*, 82, So. 2d. 12, 228 La. 284, where the accused was actually under Federal indictment at the time compulsory testimony was elicited by the State officer, and the facts in *State v. Ford*, et als, 233 La. 992, 99 So. 2d. 320, where the defendants not only had not been indicted or charged by the Federal Courts, but had been informed that they were not under investigation by Federal authorities, may have offered the opportunity to the Supreme Court of Louisiana to grant the right to a defendant to refuse immunity and to maintain his right against self-incrimination when he is actually being investigated by Federal authorities for some Federal penal violation at the time

he is offered immunity in a State proceeding. But the Supreme Court of Louisiana did not see fit to make this extension and we respectfully submit that this Honorable Court lacks the jurisdiction to widen this horizon of individual protection.

Another question presented by the petitioners for review by your Honors is that the Supreme Court of Louisiana erred in failing to hold petitioners were legally justified in claiming their privilege against self-incrimination under the Fifth and Fourteenth Amendments of the Constitution of the United States when, after being granted immunity against future State prosecution, were called upon to testify before the Grand Jury of Orleans Parish.

The inescapable fact is the holding by this Honorable Court in *Knapp v. Schweitzer*, supra, must be applied to this case. Since the 5th. Amendment to the Constitution of the United States is protection only in the face of federal encroachment, it cannot afford sanctuary to the instant petitioners. Also, as the majority opinion of this Honorable Court noted in *Knapp v. Schweitzer*, supra, the claim that compulsory testimony in a state proceeding is an infringement upon the rights of petitioners accorded to them under the 14th. Amendment is without merit, this claim having been settled and disallowed in *Twining v. State of New Jersey*, 211 U. S. 78, 29 S. Ct. 14, 53 L. Ed. 97.

There is no question that the defendants were in fact offered full immunity against future State pros-

ecution. Section 13 of Art. 19 of the Constitution of Louisiana reads as follows:

> Any person may be compelled to testify in any lawful proceeding against any one who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

The Supreme Court of Louisiana in the case of *State v. Rodriguez*, 82 So. 2d., 758; 219 La. 217, held that the grant of immunity contained in Section 13 of Article 19 of the Constitution of Louisiana was "plain, unambiguous, and subject to effective enforcement."

Nor can the petitioners avail themselves of the Ninth Amendment to the Constitution of the United States, *Knapp v. Schweitzer*, supra. The right of a citizen not to incriminate himself on either a State or Federal level is defined and expressed in Section 13 of Article 19 of the Constitution of Louisiana of 1921, and in the Fifth Amendment to the Constitution of the United States of America.

In conclusion, respondent should like to address a brief remark to the argument that the present state of the law puts a defendant between the horns of the dilemma to decide whether he should ignore immunity and thereby risk contempt on a State level or testify

and invite prosecution in a Federal proceeding. This dilemma was forged by the decisions in *Feldman v. United States*, 322 U.S., 487, 64 S. Ct. 1082, 88 L. Ed. 1408, and *Knapp v. Schweitzer*, supra.

CONCLUSION

Wherefore, respondent prays that the writs of certiorari, prohibition and mandamus heretofore issued be recalled and set aside and petitioners' petitions be dismissed at their costs and the judgment of the Supreme Court of Louisiana be affirmed.

Respectfully submitted,

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I, M. E. Culligan, member of the bar of the Supreme Court of the United States, and one of the counsel for respondent herein, hereby certifies that on the ——— day of January, 1959, I served copies of the foregoing brief on the attorneys of counsel of record for petitioner herein by mailing copies in duly addressed envelopes with first class postage prepaid, as follows:

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FILE COPY

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OCTOBER TERM, [redacted] 1958

No. [redacted] 75

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Petitioner,

versus

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

August J. Mills, Sr., prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered March 3, 1958 in the matter entitled *State of Louisiana vs. August J. Mills, Sr.*, being No. 43,972 of the docket of said Court, denying petitioner writs of certiorari, mandamus and prohibition in connection with his conviction and sentencing for contempt of Court for refusing to answer certain questions before a Grand Jury for the Parish of Orleans, State of Louisiana, after having invoked Amendments V, IX and XIV of the Constitution of the United States of America.

CITATIONS TO OPINIONS BELOW

The refusal by the Supreme Court of Louisiana of the writs sought by petitioner March 3, 1958, not reported but appearing at page 47 of the certified copy of the transcript of the record filed herewith, and printed in the Appendix hereto, page 1.

The dissenting opinion of Chief Justice John B. Fournet of the Supreme Court of Louisiana, March 3, 1958, appearing at pages 48 and 49 of the certified copy of the transcript of the record filed herewith, and printed in the Appendix hereto, pages 2, 3.

The judgment of Hon. J. Bernard Cocke, Judge of Section "E" of the Criminal District Court for the Parish of Orleans, State of Louisiana, February 19, 1958, adjudging petitioner in contempt, appearing in the certified copy of transcript filed herewith at pages 33-38, and printed in Appendix hereto, pages 4-11.

JURISDICTION

The refusal by the Supreme Court of Louisiana of the writs sought was entered March 3, 1958, as appears from page 47 of certified copy of transcript of record filed herewith and page 1 of Appendix hereto. Such refusal is final in Louisiana. (*City of Gretna v. Rossner*, 154 La. 117, 97 So. 335) Application for a re-hearing is not permitted.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) as the said refusal is repugnant to the Constitution of the United States being in derogation of rights and privileges guaranteed by Amendments V, IX and XIV thereof.

Conceding that there is jurisprudence to the effect that the first ten Amendments to the Constitution of the

United States are not operative in State Courts. (*Maxwell v. Dow*, 176 U.S. 581; 44 L. Ed. 597), we believe with Mr. Justice Harlan (*Huartado v. California*, 110 U.S. 568; 28 L. Ed. 246; *Maxwell v. Dow*, *supra* at pp. 608 and 607 respectively), and many others, that this jurisprudence originally resulted from a forgetfullness, (real or perhaps dictated by seasonable expedience), of the fact that when these Amendments were adopted

> " • • • the Constitution of each State, with few exceptions, contained and still contains a Bill of Rights, enumerating the rights of life, liberty and property which cannot be impaired by the legislative department."
>
> (Mr. Justice Harlan in the *Huartado* case, *supra.*),

and from the same forgetfulness of the fact that the first ten Amendments to the Constitution merely reaffirmed

> " • • • that the privileges and immunities enumerated in these Amendments belong to every citizen of the United States" and that "they were universally so regarded prior to the adoption of the Fourteenth Amendment."
>
> (Mr. Justice Harlan in *Maxwell v. Dow*, *supra.*)

By no rule of reason can it be thought that an acknowledged pre-existing state of facts could be so abruptly changed by the adoption of an Amendment (XIV) the very language of which confirms the existence of these facts. Times have changed. There can be no cause now for any adroitly specious reasoning continuing the formerly expedient denial of rights and privileges existing, in what is now the United States, since the landing of the Pilgrim Fathers and which rights were vigorously reaffirmed in 1791.

QUESTIONS PRESENTED

1. Whether the conviction of petitioner for contempt of court resulting from his refusal to answer certain questions before the Grand Jury of the Parish of Orleans, State of Louisiana and after having invoked his constitutional privileges, (Transcript of Record, pp. 11-14; Appendix pp. 16-19) is repugnant to Amendments V, IX and XIV of the Constitution of the United States of America.

1a. Whether said conviction is repugnant to Amendments V and IX of the United States Constitution, when the answers to questions propounded (Transcript of Record, pp. 11-14; Appendix pp. 16-19) might have furnished foundation for criminal and civil actions in the United States Court against petitioner. (Transcript of Record, pp. 29-32)

2. Whether the admitted cooperation between the State District Attorney (Parish of Orleans, Louisiana) and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, p. 16; Appendix, p. 22), the attendant widespread newspaper, television and radio publicity, (Transcript of Record, p. 15; Appendix, p. 21), the insinuating tenor of the questions propounded, (Transcript of Record, pp. 11-14; Appendix, pp. 15-20) and the nature of the setting wherein they were propounded (Transcript of Record, pp. 11-14; Appendix, pp. 15-20) justified petitioner in invoking his constitutional privilege against self-incrimination.

3. Whether Section 13, Article XIX, Louisiana Constitution, L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 (Appendix pp. 24, 25) are repugnant to Section 1, Amendment XIV of the Constitution of the United States in that the

purported immunity granted by said statutes is fictitious and restricted, leaving petitioner open to a wide variety (Municipal, State and Federal) of actions (criminal and civil) against him and thereby abridging the privileges and immunities guaranteed him as a citizen of the United States (Transcript of Record, pp. 29-32).

4. Whether the judgment rendered February 19, 1958 (Transcript of Record pp. 33-38; Appendix pp. 4-11.) ordering petitioner to answer questions propounded by Grand Jury concerning public bribery was repugnant to Amendments V, IX and XIV of the United States Constitution in that it would force petitioner to testify in effect against himself, he having been indicted for public bribery February 12, 1958. (Transcript of Record p. 44)

STATUTES INVOLVED

Amendments V, IX and XIV (Section 1) of the Constitution of the United States; Article XIX, Section 13, of the Louisiana Constitution; Louisiana Revised Statutes —L.S.A.-R.S. 14:121, R.S. 15:468, and R.S. 15:11. Printed in Appendix pp. 24, 25.

HOW FEDERAL QUESTIONS RAISED

On January 15, 1958 petitioner appeared before the Orleans Parish Grand Jury and refused to answer certain questions, claiming his "Constitutional Rights, both Federal and State," (Transcript of Record pp. 1, 11, 12, 13 and 14; Appendix pp. 16-19) and also stating his fear of "a civil suit or something like that." (Transcript of Record pp. 1 and 13; Appendix pp. 17, 18.)

On January 22, 1958 (Transcript of Record pp. 9-14;

Appendix pp. 12-20), the Grand Jury for the Parish of Orleans, State of Louisiana, filed a motion seeking to have petitioner adjudged in contempt for declining to answer said questions.

On February 10, 1958, petitioner filed an answer (Transcript of Record, p. 29) to the motion and rule for contempt in which he averred, among other things, that

(a) Being compelled to answer the questions under the circumstances and surroundings and facts existing at the time they were propounded would be an abridgement and denial of his rights under Amendments V, IX and XIV of the Constitution of the United States;

(b) Petitioner and his wife had been and were under investigation by the United States Revenue Service and others; had been required to sign waivers of prescription; and, at the time of the questions, eleven indictments had been returned by the United States Grand Jury against members of the New Orleans Police Department, three for income tax evasion and eight for perjury or false statements; (Transcript of Record, pp. 15-16; Appendix pp. 21, 22.)

(c) The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else, is purely conditional, not binding on any successor, and, consequently, if petitioner were forced to answer the questions declined, and those that would inevitably follow, it would be a violation of the provisions of the Constitution of the United

States, particularly Section 1 of Amendment XIV thereof; (Transcript of Record, pp. 22-23—Memorandum of Authorities—and 32)

(d) The cooperation existing between the District Attorney for the Parish of Orleans, the Police Bureau of Investigation, the United States Attorney for the Eastern District of Louisiana, the Internal Revenue Service of the United States and its investigators, as attested by the eleven Federal indictments noted above in paragraph (b), the sixty odd criminal cases (not bribery) filed in the Criminal District Court for the Parish of Orleans against individuals allegedly engaged in business similar to that insinuated to petitioner; the seven suits for occupational licenses, for business similar to that insinuated to petitioners, each for well over a thousand dollars, on file in the Civil District Court for the Parish; and, the insinuating tenor of some of the questions propounded with reference to petitioner's son and brother were **facts and circumstances** ample to cause petitioner to fear that any answer to the questions propounded, and others that would inevitably follow, might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings, criminal and civil, against him under the laws of the United States and the State of Louisiana for matters unrelated to bribery and for which there existed no immunity statutes, and ample cause for him to declare that forced answers would be an abridgement of his constitutional rights under Amendments V, IX nd XIV of the Constitu-

tion of the United States. (For District Attorney cooperation, etc. see Transcript of Record page 16, Appendix page 22. For insinuating questions,—Transcript of Record pp. 11-12, Appendix pp. 15-20, Unenumerated Rights—Transcript of Record, p. 25—Memorandum of Authorities)

(e) Any doubt should be resolved in favor of petitioner (*Quinn v. U. S.*, 75 S. Ct. 668, *Hoffman v. U. S.*, 341 U.S. 479) or the very purpose of the privilege would be frustrated. (32 L.R.A. 133).

On February 10, 1958, an agreed Stipulation of Facts was filed, (Transcript of Record, pp. 9-17, Appendix, pp. 12-23), the matter was argued, taken under advisement, and, on February 19, 1958, Judge J. Bernard Cocke of Section "E" of the Criminal District Court for the Parish of Orleans, State of Louisiana, rendered a judgment (Transcript of Record, pp. 33-38; Appendix pp. 4-11) ordering petitioner to answer the questions propounded by the Grand Jury, to which ruling petitioner seasonably reserved Bill of Exception No. 1 (Transcript of Record p. 39) reiterating his plea of the ruling's repugnance to Amendments V, IX and XIV of the Constitution of the United States. Petitioner again declined to answer the questions for the same reasons, was adjudged in contempt, filed a Motion for a New Trial (Transcript of Record p. 41) which was overruled and Bill of Exception No. 2 reserved, reiterating former pleas, (Transcript of Record p. 42), was sentenced to serve ten (10) days in the Parish Prison, pay a fine of $100.00, and in default thereof serve an additional ten (10) days (Transcript of Record p. 5), and filed Notice of Intention to Apply for Writs (Transcript of Record pp. 5 and 43).

One week prior to conviction and sentencing of petitioner, February 12, 1958, the Grand Jury for the Parish of Orleans found an indictment against him for conspiring with others "to commit the crime of Public Bribery" which was filed with the Criminal District Court for the Parish of Orleans under No. 159-238. (Transcript of Record, p. 44).

Application for Certiorari, Mandamus and Prohibition was filed with the Supreme Court of Louisiana February 25, 1958 (Transcript of Record p 1) urging, among other things, the repugnance of the ruling and judgment of the District Court to Amendments V, IX and XIV of the Constitution of the United States.

On March 3, 1958 the Supreme Court of Louisiana refused the writs, Chief Justice John B. Fournet and Justice James D. Simon dissenting. (Transcript of Record p. 47; Appendix p.). Chief Justice Fournet filed a dissenting opinion (Transcript of Record pp. 48-49; Appendix pp. 2, 3) in which he said:

> "Moreover, it is my opinion that the relator is entitled to the protection offered by the 5th and 14th amendments to the Constitution of the United States under the showing made".

On March 3, 1958 a Motion For Stay of Execution was filed with the Supreme Court of Louisiana and petitioner was granted 90 days within which to petition the Supreme Court of the United States for writ of certiorari, contingent upon bond for $200.00 being furnished, (Transcript of Record, pp. 50-52) and the bond was so furnished. (Transcript of Record p. 53)

STATEMENT OF CASE

As the facts of the case pertinent to this petition are set out in detail in the section hereof entitled "How Federal Questions Raised", *supra*, it is unnecessary to repeat them here.

REASONS FOR GRANTING WRIT

1. The conviction and sentencing of petitioner (Transcript of Record pp. 5 and 33-38) for contempt violates his privilege against self-incrimination (U.S. Cons. Amend. V) because:

(a) The questions he declined to answer, (Transcript of Record pp. 1, 11-14; Appendix pp. 15-20) and those that inevitably would have followed, were such that the answers thereto not only would have subjected him to possible criminal prosecution in the courts of the United States, but, also, would have tended to incriminate him.

> "Privilege against self-incrimination is not limited to admissions that would subject witness to criminal prosecution but also extends to admissions that might only tend to incriminate. U.S.C.S. Const. Amend. 5."
>
> *Emspak v. U. S.*, 75 S. Ct 687

(b) Answers to questions propounded "could have well furnished" links "in the chain of evidence needed to prosecute the witness for a federal crime", (quotes from *Emspak* case, *supra* and *infra*), especially when petitioner had signed waivers of prescription with Federal authorities. (Transcript of Record, pp. 15-16; Appendix pp. 20, 21.)

> "Questions concerning witness' associations fell within scope of privilege against self-incrimination, where to have revealed knowl-

edge about named individuals, all of whom had been previously charged with the Communist affiliations, could have well furnished a link in the chain of evidence needed to prosecute the witness for a federal crime, ranging from conspiracy to violate Smith Act to filing of false non-communist affidavit under Taft-Hartley Act

" 'To sustain the privilege', this Court has recently held, 'it need only be evident from the implications of the question, in the setting in which it is asked, that a respondent answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result', and nearly 150 years ago Chief Justice Marshall enunciated a similar test: 'Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself'."

Emspak v. U. S., supra.

(c) Petitioner is the sole judge of whether the answers would criminate him, he alone knowing what they would be.

" * * * if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, **it must rest with himself,** who alone can tell what it would be, to answer the question or not. If in such a case, he say upon his oath that his answer would criminate himself, **the court can demand no other testimony of the fact."**

Chief Justice Marshall in:

U. S. v. Aaron Burr, Fed. Cas. No. 14,692e.
(emphasis ours)

2. The admitted cooperation between the State District Attorney and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, p. 16; Appendix, p. 22.), the raging newspaper, television and radio publicity concerning this investigation, (Transcript of Record, p. 15; Appendix, p. 21), the insinuating tenor of the questions propounded, (Transcript of Record, pp. 11-14), and the inquisitorial nature of the setting wherein they were propounded (Transcript of Record, pp. 11-14; Appendix pp. 15-20.) were such facts and circumstances as to cause petitioner to fear that any answers might be found to be incriminating, (*Emspak v. U. S., supra*), and that the privilege against self-incrimination was under wrongful attack.

> "It is when the privilege of self-incrimination is **under attack** by those who **wrongfully conceive** of it as merely a **shield for the guilty** that **governmental bodies must be most scrupulous in protecting its exercise.**" (Emphasis ours)
>
> *Quinn v. U. S., supra.*

3. (a) Section 13, Article XIX of the Constitution of the State of Louisiana (Appendix, p. 24; Transcript of Record, p. 20) limits the immunity offered petitioner to the non-use, "in any judicial proceedings", of his testimony given "in any lawful proceeding against any one who may be charged with having committed the offense of bribery" (Quotes from Art. XIX, sec. 13, La. Const.), and any other interpretation or application, such as the herein judgment and conviction, is repugnant to Section 1, Amendment XIV, U. S. Constitution, and abridges petitioner's privilege of due process of law and his privilege against self-incrimination, each of which, among others, he enjoys as a citizen of the United States.

because the proceeding at which petitioner's testimony was sought was a Grand Jury investigation and NOT a proceeding against any one **"charged** with having committed the **offense** of **bribery"** (Quotes from Art. XIX—emphasis ours) or any other offense. (Transcript of Record, pp. 11-14; Appendix, pp. 15-20)

(b) The immunity offered by L.S.A.-R.S. 14:121 (Appendix, p. 25; Transcript of Record, p. 20) is limited to "the **offender**, under the public bribery etc. articles" who gives a sworn statement to the **"District Attorney charged** with the **prosecution** of the **offense"** (Emphasis ours), and who later "gives evidence tending to convict any other offender under those articles"; and the granting of this immunity is solely "at the discretion of said district attorney" and **only** for "the offense reported". (All quotes from R.S. 14:121; emphasis ours). From the Stipulation of Facts (Transcript of Record, pp. 9-17; Appendix, pp. 20-22) and the entire record herein it is apparent that the petitioner was NOT an "offender", the Grand Jury was NOT "the District Attorney", and the District Attorney was NOT engaged "with the prosecution of the offense". Interpreting R.S. 14:121 as applicable herein is certainly enforcing a law which abridges the privileges and immunities enjoyed by petitioner, (among which are those against self-incrimination and those unenumerated rights guaranteed by Amendment IX of the U. S. Constitution), and such interpretation is repugnant to Section 1, Amendment XIV of the U. S. Constitution.

(c) L.S.A.-R.S. 15:468 (Appendix, p. 25) is just as specific, stating that a "person may be compelled to testify" but **only** "in any lawful proceeding against another charged with commercial bribery, etc." As pointed out above, the attempt to make petitioner's refusal to

answer not justified by these statutes is a flagrant abridgement of his constitutional privileges and immunities.

By no stretch of the imagination can these statutes be said to grant immunity for offenses against municipalities, states or the Federal government, and the law books and reports are replete with authorities to the effect that a witness is not guilty of contempt when the only security offered is of such nebulous and impossible nature.

> "Although there are some earlier cases to the contrary, it is generally held that, under **immunity statutes providing only that testimony** given by a witness **shall not be used against him** in a criminal prosecution, one may stand upon his constitutional guaranty against being compelled to give incriminatory testimony and **refuse to testify when his testimony might furnish leads** to other testimony which would convict him." (Emphasis ours)
>
> *58 Am. Jur. Witnesses* p. 76, Sec. 90 (and numerous cases cited, including *Arndstein v. McCarty*, 245 U.S. 71, 65 L. Ed. 138; *Counselman v. Hitchcock*, 142 U.S. 547, 35 L. Ed. 1110)

> "But by the **weight of authority** and **better reason,** he will **not be compelled** to answer if the **only security** he has is that his **testimony** will **not be used against him,** since it may disclose **offenses hitherto unknown** and lead to the discovery of other evidence whereby he may be convicted." (Emphasis ours)
>
> 24 L.R.A., NS, 168, (citing *Counselman v. Hitchcock*, *supra*, and others).

4. The judgment complained of was rendered February 19, 1958. (Transcript of Record, pp. 33-38; Ap-

pendix, pp. 4-11) One week prior thereto, February 12, 1958, petitioner was indicted for conspiracy to commit public bribery. (Transcript of Record, p. 44) The judgment and sentence speak for themselves as a flagrant attempt to impinge upon the Constitutional guaranties which petitioner had invoked.

5. Amendment IX, U. S. Const. reads:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people".

"The Ninth Amendment announces and acknowledges in a single sentence that (1) the individual, and not the State, is the source and basis of our social compact and that sovereignty now resides and has always resided in the individual; (2) that our Government exists through the surrender by the individual of a portion of his naturally endowed and inherent rights; (3) that every one of the people of the United States owns a residue of individual rights and liberties which have never been, and which are never to be surrendered to the State, but which are still to be recognized, protected and secured; and (4) that individual liberty and rights are inherent, and that such rights are not derived from the Constitution but belong to the individual by natural endowment". (*The Forgotten Ninth Amendment*, p. 1, Bobbs-Merrill, publishers)

The Ninth Amendment applies to the States. (*Eilen-Decker v. District Court*, 134 U.S. 31, 33 L. Ed. 801; *Palko v. Connecticut*, 302 U.S. 319, 82 L. Ed. 288).

What are some of the unenumerated rights? Since there is no list of them, we must resort to hypothesis.

Suppose Louisiana or any State should enact a stat-

ute enabling one with a fancied claim against another to require that other person to disclose to him all details of their transactions PRIOR to the filing of a suit. There is no prohibition in any Constitution against such ridiculous procedure, but the right of privacy as to business transactions until aired by due process of law is inherent in all individuals. Is there any doubt as to what the Supreme Courts would do with such a statute?

Yet, that is exactly the situation here. If petitioner were forced, under the provisions of the Louisiana Constitution and Revised Statutes relied upon by the Grand Jury for the Parish of Orleans, to answer the question about his occupation during 1950 to 1955 (Transcript of Record, p. 13; Appendix, pp. 15, 16, 18.) and other questions that would have followed, the provisions relied upon by the Grand Jury would in effect become just such a hypothetical statute as suggested above, for petitioner might lay himself open to a multiplicity of legal actions including suits by the United States Government for income tax, gambling tax, gambling stamp, etc. etc., which never would have been instituted but for his answer extracted under that cloak of fancied immunity. It is certainly not contempt to repulse this adroitly circumlocutory invasion of the inherent right of privacy guaranteed by Amendment IX of the U. S. Constitution.

CONCLUSION

For the foregoing reasons, and because

> "Certiorari would be granted to determine whether defendant was being deprived of his liberty **without due process** in being punished for his **refusal** to give allegedly **self-incriminating testimony** even though there was in effect **an immunity statute.**" (Emphasis ours)
>
> *Regan v. People*, 75 S. Ct. 585.

and, in such circumstances as these,

> "The constitutional guaranty against self-incrimination must be accorded **liberal construction in favor of the right** it is intended to secure." (Emphasis ours)
>
> *Hoffman v. U. S.*, 341 U.S. 479, 95 L. Ed. 1118.

this petition for a writ of certiorari should be granted.

Respectfully submitted,

MILO B. WILLIAMS,
DAVID A. NEUHAUSER,
Counsel for Petitioner,
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New Orleans 12, Louisiana.

SUPREME COURT OF LOUISIANA
New Orleans

No. 43,972

BY McCALEB, J.: March 3, 1958

State of Louisiana

v.

August J. Mills, Sr.

In re: August J. Mill, Sr. applying for writs of certiorari, mandamus and prohibition

---

Writs refused.

We find no error of law in the ruling complained of.

/s/ EHMcC
/s/ ALP
/s/ JBH
/s/ FWH
/s/ HAM

I respectfully dissent.

/s/ JDS

A TRUE COPY
Clerk's Office, New Orleans
March 3, 1958

/s/ V. J. Courville
Clerk

(SEAL)

SUPREME COURT OF LOUISIANA

No. 43,972

STATE OF LOUISIANA
v.
AUGUST J. MILLS, SR.

In re: AUGUST J. MILLS, SR., APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

FOURNET, Chief Justice (dissenting from the refusal to grant the writs.)

Under the express provisions of the Louisiana Constitution of 1921 that are to be found under the heading of "Bill of Rights," Section 11 declares that "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution * * *." The only exception to be found in this Constitution is in Article XIX, which, under the heading of General Provisions, contains Section 13, declaring: "Any person may be compelled to testify in any lawful proceeding **against any one who may be charged with having committed the offense of bribery** * * *." (The emphasis has been supplied by me.)

In the instant case the relator is not requested to testify against anyone "charged with having committed the offense of bribery," for there is no such charge pending against anyone, even by affidavit. From the questions propounded it would appear this is merely a "fishing expedition" for discovery of evidence of this char-

acter. It necessarily follows Section 13 is clearly inapplicable here.

Moreover, it is my opinion that the relator is entitled to the protection offered by the 5th and 14th amendments to the Constitution of the United States under the showing that is made.

I therefore respectfully dissent from the refusal to grant these writs.

A TRUE COPY
Clerk's Office, New Orleans,
March 3rd, 1958

/s/ V. J. Courville

Clerk Supreme Court of Louisiana

(SEAL)

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
SECTION "E"

STATE OF LOUISIANA
versus
AUGUST J. MILLS, SR.

JUDGMENT ON RULE FOR CONTEMPT

August J. Mills, Sr., was cited in a rule for contempt, it being alleged, that he refused to answer questions propounded of him by the Grand Jury for the Parish of Orleans.

The subject matter under investigation concerned payment by relator of bribes to members of the New Orleans Police Department for protection from arrest for lottery gambling operations.

While admitting the existence of exceptions under the law of Louisiana to the right to claim immunity from testimonial compulsion, relator contends that these exceptions are not applicable to his case.

Art. 1, Section 11 of the Constitution of Louisiana provides:

> "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution. * * * "

The exception referred to above appears in Section 13

of Article 19 of the same constitution and reads as follows:

> "Any person may be compelled to testify in any lawful proceeding against anyone who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

In the case of *State vs. Rodriguez*, 219 La. 217, 52 So. 2d. 756, the Supreme Court in passing upon these two sections of the constitution said:

> "We must keep in mind that we are here dealing with two sections of our Constitution, which are of equal force and are not in conflict, and not with a provision of the Constitution granting the privilege against self-incrimination and an act of the Legislature seeking to take it away or make an exception thereto."
>
> * * * * *
>
> "We fully agree with the conclusions made by the trial judge in his return to the writ, in which he said: 'The conclusion is inescapable that our State has the right to grant immunity to its citizens from being compelled to give testimony that will incriminate them, or to withhold that right, or give it under certain conditions or subject to certain exceptions. The people of this State have chosen to give it subject to the exception with which we are here concerned.' "

In rounding out a complete *modus operandi* for the more effective prosecution of the crime of bribery, the legislature enacted LSA-RS 14:121, and LSA-RS 15:468.

L.S.A.-R.S. 14:121 provides:

> "The offender under the public bribery, bribery of voters or corrupt influencing articles, who states the facts under oath to the district attorney charged with the prosecution of the offense, and who gives evidence tending to convict any other offender under those articles, may, in the discretion of such district attorney be granted full immunity from prosecution in respect to the offense reported, except for perjury in giving such testimony."

L.S.A.-R.S. 15:468 provides:

> "Any person may be compelled to testify in any lawful proceeding against another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing, and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or expose him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony."

In seeking to place his case beyond the exception contained in Section 13 of Article 19 of the Constitution, relator poses the following questions:

> (a) "If the Grand Jury questioning of defendant be a 'lawful proceeding', against whom was this proceeding being pressed?"
>
> (b) "Had anyone been charged with the offense of bribery?"

Relator in treating L.S.A.-R.S. 14:121, for the same purpose asks the question:

> "Who was 'the offender?' "

And again in discussing L.S.A.-R.S. 15:468, and

again for the same reason, relator inquires:

> "Was the Grand Jury questioning of defendant "a proceeding against another charged with "any offense"?"

Having himself answered these questions in the negative, relator then asserts:

> "A person may be compelled to testify (as an exception to the crimination rule) ONLY when the other person has been charged with bribery;"
>
> Section 13, Art 19., La. Const.
>
> "**Only** a fellow offender may be forced to testify (as an exception to the rule) against another charged with violation of the articles noted;"
>
> L.S.A.-R.S. 14:121
>
> "A person may be compelled to testify a(s an exception to rule) ONLY when the other person has been CHARGED with commercial bribery, public bribery, etc."
>
> L.S.A.-R.S. 15:468.

The Supreme Court of Louisiana answered relator's questions, and passed upon the merit of his contentions in the case of *State vs. Rodriguez*, 219 La. 217, 52 So. 2d. 756.

In that case the relator urged the court to hold "(2) that since he was not advised that anyone had been **charged** with the offense of bribery, Section 13 of Article 19 of the Constitution has no application, etc."

In disposing of this question the Court said:

> "Relator's second contention is that the word 'charged' as used in Section 13 of Article 19 means 'charged in an affidavit, bill of information, or

indictment'. Under this interpretation the provisions of this section would and could apply only in a trial before the judge or petit jury. If this were the interpretation intended by the drafters of the Constitution, they could have easily said, "Any person may be compelled to testify in any lawful proceeding against anyone who may be charged in an affidavit, bill of information, or indictment with having committed the offense of bribery * * * ". That the framers did not intend for this section to apply only to trials of accused persons is conclusively shown by its specific provisions that any person may be compelled to testify in any lawful proceeding". Certainly investigations being conducted by grand juries, those by district attorneys under L.S.A.-R.S. 15:17.1 preliminary hearings before committing magistrates and coroner's inquests are "lawful proceedings", within the meaning of the article.

In the instant case the grand jury under the charge of the court was investigating crimes of public bribery, and in doing so it was its sworn duty to inquire diligently into whether such a crime or crimes had been committed, and true presentment make. Under such circumstances, to give relator's interpretation to the article would, in effect nullify and make meaningless their article insofar as grand jury investigations are concerned. Due to the nature of the crime of bribery, it is difficult and often impossible to secure evidence against any party to the transaction except by the evidence of another party to the bribe, and, if the grand jury is not permitted to compel such testimony, the perpetrator will very likely never be formally charged and brought to trial.

It is our opinion it was the intention of the drafters of the Constitution that the word 'charged' was not to be limited and restricted solely to a formal charge by affidavit, informaiton, or indictment. Under this interpretation, the provision of

the article which assures relator that his testimony cannot thereafter be used against him in any judicial proceeding fully protects him whether or not a formal charge is pending against any individual at the time relator's testimony is given in a lawful proceeding."

The reasoning adopted by the Court in the *Rodriguez* case as it affects Section 13 of Article 19 of the Constitution, is equally applicable in the case at bar to L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15.468. There is no merit to relator's contention that his case falls without the exceptions contained in Sec 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468.

Under the caption Extent of Immunity, relator raises his second contention.

In this connection it is asserted that the grants of immunity provided for in Sec. 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 are not all inclusive, but are obviously limited to the statement that the testimony of the witness will not later be used against him. It is also contended that the grant of immunity contained in Sec. 13 of Art. 19 of the Constitution and L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 cannot affect offenses against municipalities, states or the Federal government.

In answer to this contention, the case of *State vs. Rodriguez*, 219 La. 217, 52 So. 2d 756, is authority for the right in the State to restrict or limit immunity.

As the relator in the case at bar was not under any state, federal or municipal charges, at the time he refused to answer the questions, his case falls under the authority of *State vs. Ford, et. als.*, 99 So. 2d. 320, and

not *State vs. Dominguez*, 82 So. 2d. 228 La. 284. This contention is without merit.

As to relator's contention that the 5th. and 14th Amendments to the Constitution of the United States are applicable in the case at bar, suffice it to say that the *Rodriguez* and *Ford* cases settled this claim.

> "In the leading case of *Twining vs. New Jersey*, 1908, 211 U.S. 78, 29 S. Ct. 14, 26, 53 L. Ed. 97, it was held that the exemption from self-incrimination provided by the Fifth Amendment was not one of the fundamental rights of national citizenship so as to be included among the privileges and immunities of citizens of the United States which the states are forbidden to abridge by the provision of the Fourteenth Amendment that no state shall deprive any person of life, liberty, or property without due process of law. In the cited cases the Supreme Court said: " * * * we think that the exemption from compulsory self-incrimination in the courts of the states is not secured by any part of the Federal Constitution."
>
> *State vs. Ford, et als.*, 99 So. 2d. 320.
> *State vs. Rodriguez*, 219 La. 217, 52 So. 2d. 756.

In the case of *State vs. McCarroll*, 138 La. 454, 70 So. 448, the Supreme Court of Louisiana held that Art. 15 of the Constitution of 1898 and 1913 reading the same as that now contained in Art. 1 Sec. 15 of the Constitution of 1921, was "meaningless' as the people of this state retain all rights the exercise of which is not prohibited by the Constitution of the state or the United States."

As the Constitution of 1921 did in fact enumerate and set out the circumstances, conditions and limitations, affecting the right of the citizen to claim immunity from

testimonial compulsion, Sec. 15 of Art. 1 of the Constitution of this state and the 9th. Amendment to the Constitution of the United Staets are inapplicable to the issues presented in the case at bar.

For the reasons hereinabove recited the court is of the opinion that the defendant in rule, August J. Mills, Sr., should answer the questions propounded by the Grand Jury as set out in the rule for contempt herein filed.

IT IS THERFORE ORDERED that the said August J. Mills, Sr., repair to the room of the Grand Jury, and there answer the questions propounded of him by the Grand Jury, or in failing so to do, suffer the penalties provided by law.

New Orleans, Louisiana 19th day of February, 1958.

/s/ J. Bernard Cocke
Judge

A TRUE COPY
Clerk's Office 5/15/1958

/s/ Dan B. Haggerty
Deputy Clerk,
Criminal District Court,
Parish of Orleans.

(SEAL)

STIPULATION

It is agreed by and between Honorable Leon D. Hubert, District Attorney for the Parish of Orleans, on behalf of the State of Louisiana, and David A. Neuhauser and Milo B. Williams, Attorneys for August J. Mills, Sr., defendant in rule, that the following agreement and stipulation as to facts is hereby entered into by and between Counsel and shall be considered as evidence herein in lieu of the taking of testimony on the hearing of this rule.

1. That the following is a true, correct and genuine copy of the Rule filed herein by the Grand Jury for the Parish of Orleans, State of Louisiana, appearing through its foreman, Honorable James J. Reiss, duly and properly impanelled to serve as such from September 3, 1957 to March 3, 1958, service of which was made (and accepted) by the said August J. Mills, Sr., defendant in rule, and that the copy of the transcript of the proceedings attached to the said rule is a true, correct and genuine copy of the proceedings had before the said Grand Jury on Wednesday, January 15th, 1958, when the said August J. Mills, Sr., had been duly and legally summoned as a witness before the said Grand Jury, all as reported by Mr. Leonard J. Bossier, Jr., official stenographer, and duly certified as true and correct by him:

ORLEANS PARISH
GRAND JURY

PARISH OF ORLEANS
STATE OF LOUISIANA

IN RE: **AUGUST J. MILLS, SR.**

MOTION

On motion of the Grand Jury for the Parish of Orleans, State of Louisiana, appearing herein through its foreman, James J. Reiss, duly and properly impanelled

to serve as such from September 3, 1957 to March 3, 1958, and on suggesting to this Honorable Court that:

On January 15, 1958, pursuant to notice the said Grand Jury met in the Grand Jury Room, Criminal Courts Building, New Orleans, Louisiana;

While the said Grand Jury was then and there engaged in an inquiry in regard to public bribery, August J. Mills, Sr., having been duly subpoenaed, was called and sworn as a witness. The said witness was then and there contemptuous of the Grand Jury in that after having been advised of his rights and obligations under the law and after having been given immunity by the District Attorney under the provisions of R.S. 14:121, when asked the questions contained in the attached Exhibit A, which is made part hereof, the answers to which were essential and material to matters under consideration by the Grand Jury, he refused to answer said questions, the questions and replies being as contained in the said exhibit.

WHEREFORE, your mover, the Grand Jury for the Parish of Orleans, State of Louisiana, acting herein through its Foreman, James J. Reiss, moves that this Honorable Court order the said August J. Mills, Sr., to show cause on the 27th day of January, 1958 at 10:00 A. M. why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans, State of Louisiana and of the Criminal District Court for the Parish of Orleans.

S/ James J. Reiss
Foreman, Grand Jury for the
Parish of Orleans

New Orleans, Louisiana
January 22nd, 1958.

ORDER

Considering the foregoing Motion it is ordered that August J. Mills, Sr., show cause on the 27th day of January, 1958, at 10:00 A. M., O'clock why he should not be adjudged in contempt of the Grand Jury for the Parish of Orleans and of the Criminal District Court for the Parish of Orleans.

S/ J. Bernard Cocke, Judge
Criminal District Court
Parish of Orleans

A TRUE COPY

s/ E. A. Mouras
Minute Clerk

PROCEEDINGS OF THE ORLEANS PARISH GRAND JURY ON WEDNESDAY, JANUARY 15, 1958

PRESENT:

Mr. Leon D. Hubert, Jr., District Attorney
Mr. John Nelson, Jr., Assistant District Attorney
Members of the Grand Jury

AUGUST J. MILLS, SR., Mandeville, Louisiana, a witness called by the Orleans Parish Grand Jury, and after having been first duly sworn by the Foreman, testified as follows:

EXAMINATION BY MR. NELSON:

Q. You are presently employed, Mr. Mills?

A. No.

Q. Do you live here in New Orleans sometimes?

A. Well, sometimes. I have an apartment here. When I come to the City I stay in it.

Q. Are you under a doctor's care now?

A. I am trying to be. I am trying to go to the hospital. They might send me there. The doctor over the Lake told me he couldn't do anything. I have to go to Dr. Willough by for—might be the glands, you see, because I have a swollen gland here and it may be muscles. He don't know. So he told me to go to Dr. Willoughby. Thats up on Magnolia, up by the Baptist Hospital.

Q. Mr. Mills, as you already know, this jury is inquiring into the lottery operation from 1950 to 1955 and that is what we would like to talk to you about. What was

your employment from 1950 to 1955, sir?

A. I refuse to answer that question on my Constitutional Rights, both Federal and State.

Q. Mr. Mills, you have lived a full life?

A. Pardon?

Q. A full life?

A. Yes, sir, I have lived a full life.

Q. And you have reared a boy we met this morning that looks like he is very intelligent. Why don't you try to help us clear up this mess, Mr. Mills?

A. I can't help you clear up no mess.

Q. You could.

A. Can't do it.

Q. This thing could be brought to an end tonight. I would like to talk to you as a friend rather than a prosecutor and I wish I had an opportunity to talk to you in a barroom somewhere rather than here. Is your reason for not lending assistance due to the fact that you don't trust the people that are in the thing?

A. I am going to refuse to answer that question, too.

Q. Mr. Mills, you understand the seriousness of this thing and how it could effect particularly your son, do you not?

A. I don't know. I am in no position to answer any questions. I don't understand a lot of this stuff and I am going to stand on my Constitutional Rights on anything like that.

BY THE FOREMAN:

Q. Mr. Mills, is it you or Henry that was the Pan American Liquor Company?

A. That's Henry. I was in it but I sold out.

Q. It's quite a sizeable business?

A. I sold out and retired.

BY MR. HUBERT:

Q. Mr. Mills, under the law, and particularly Section 121 of Title 14, District Attorney is authorized to give immunity to any witness in so far as his own conduct in any matter of public bribery is concerned, and that is a full immunity from prosecution as to any participation he may have had in any matter of public bribery. In addition to that both the law, specifically Section 468 of Title 15, provides that a witness who does give testimony concerning his operations in a public bribery matter that that testimony can never be used against him. So you have a full protection for yourself with reference to your testimony as to your participation in any public bribery. Now, are you under any Federal charges right now?

A. No, I am not.

Q. Are you under any State charges?

A. No, I am not.

Q. Well, I give you the immunity I spoke to you about and that being the case, of course, you are required to answer the questions.

BY MR. NELSON:

Q. You understand what that means, Mr. Mills?

A. I do.

Q. Would you care to discuss it with an attorney, sir?

A. Well, no, I don't see why I should discuss it with an attorney now. This is something I don't know anything about, like a civil suit or something like that.

Q. There's no civil suit.

A. But there could be allowed a civil suit on something you couldn't prove or something like that. I am kind of mixed up on this thing. I got to watch myself closely.

Q. I understand. But you do understand what immunity means, do you not?

A. I know it. I understand what immunity means.

Q. Mr. Mills, did you between 1950 and 1955, have any interest in the lottery companies?

A. You mean own a lottery company?

Q. Yes, sir.

A. I never owned a lottery company in my life.

Q. You were working for a lottery company, were you not, sir?

A. I am going to refuse to answer that question on my Constitutional Rights.

Q. All right. Mr. Mills, have you ever been in the G & G Bar?

A. Yes, sir, I have.

Q. Very often?

A. Well, lots of times I go there.

Q. Between 1950 and 1955, did you go to the G & G Bar very regularly?

A. Well, I went there quite a few times, yes sir.

Q. When you went there, did you ever see any other lottery owners there at the same time that you went there?

A. I am going to refuse to answer that question, too. I don't know what's going on.

Q. All right, sir. Mr. Mills, during the years 1950 to the present date, have you ever given any money to any police officers?

A. I am going to refuse to answer that question on my Constitutional Rights, both Federal and State.

Q. From 1950 up to the present date, so the dates will be inclusive, did you ever see anyone else give any money to any member of the New Orleans Police Department?

A. I am going to refuse to answer that question on my Constitutional rights.

Q. All right, sir.

A. I don't know whether I did or not. So I am going to refuse to answer that question.

Q. All right, sir. Did you ever talk to any police officers about any money paid to New Orleans Police Department?

A. I am going to refuse to answer that question too, Constitutional Rights.

Q. Did you ever talk to any lottery owner about the amount of money that was being paid to members of the New Orleans Police Department?

A. I am going to refuse to answer that question, Constitutional Rights.

BY MR. HUBERT What we want to do is to have you come back next Wednesday which is the 22nd at 10:00 o'clock.

A. Yes, sir.

Q. Well, we will take you down in the elevator.

A. If I am in the hospital—suppose I am in the hospital or something like that?

Q. Well, if you are in the hospital, have your attorney or somebody let us know and bring us these certificates from your doctor that you are in the hospital, in other words, some doctor that is treating you.

A. Because I don't know how this is going to be.

Q. I understand that. You are going to be under subpoena to come back next Wednesday.

A. I don't have to have a subpoena, I'll just come back on your word.

Q. Well, we'll have one anyway. It's going to be served on you right now.

CERTIFICATE. I hereby certify that the foregoing is a true and correct transcript of the testimony as reported by me and transcribed on the typewriter by me personally.

S/ Leonard J. Bossier, Jr.,
Official Court Reporter

2: That on January 27, 1958, August J. Mills, Sr., through counsel, filed a motion for a continuance predicated upon the fact that he was hospitalized and under care of a physician; and, in consequence of said motion, the rule for contempt was continued until February 10, 1958 at 10:00 o'clock A.M.

3: That the following two documents (Form 872—Rev. Nov. 1956) U. S. Treasury Department, Internal Revenue Service, both dated January 31, 1957, triplicate, addressed to Agnes M. and August J. Mills, Sr., taxpayers of New Orleans, Louisiana, entitled "CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX" each signed by Agnes M. Mills and August J. Mills, Sr., and by Louis

H. Schweickhardt, Group Supervisor for Chester A. Usry, District Director of Internal Revenue, for the years ending December 31, 1952 and 1953, were duly signed and entered into by and between the said parties, and it was agreed therein that the amount of any income, excess profits or war profit taxes due under any return or returns made by or on behalf of the aboved named Agnes M. and August J. Mills, Sr., for the taxable years ending December 31, 1952 and 1953 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1958, except that, if a notice of a deficiency in tax is sent to said taxpayer or taxpayers by registered mail on or before said date, then the time for making any assessment is prohibited and for sixty days thereafter, and that the said documents attached hereto are true, correct and genuine photostat triplicate copies of what they represent themselves to be, and may be considered as evidence herein.

4: That the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury have been for several months and are at present engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States.

5: That publicity through daily newspapers, television and radio has been carried on for several months regarding the investigation embarked upon by the federal authorities into the income tax returns of some of the members of the New Orleans Police Department for the years 1950 to 1955, inclusive.

6: That eleven indictments have been returned by the United States Grand Jury against members of the

New Orleans Police Department in connection with the aforementioned investigations; three for tax income evasion and eight for perjury or false statements.

7: That there has existed, and now exists, cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana.

8: That August J. Mills, Sr., had not, at the time of this Grand Jury interrogation of him, stated any facts under oath to the District Attorney or any of his assistants concerning the public bribery, bribery of voters or corrupt influencing articles, nor was he an "offender" under such articles.

9: That, at the time of this Grand Jury interrogation, there were on file in the Criminal District Court for the Parish of Orleans the following cases, all involving alleged violations of L.S.A.-R.S. 51:281:

State of Louisiana v. Jules Crovetto,
Nos. 149-268 through 298;
State of Louisiana v. Michael Callia,
Nos. 149-340 through 351;

State of Louisiana v. L. Forsyth,
Nos. 149-434 through 450;
State of Louisiana v. Harold Mills,
Nos. 149-505 through 516;
State of Louisiana v. A. J. Mills, Jr.,
Nos. 149-277 through 288.

10: That, at the time of this Grand Jury interrogation of defendant, here were on file in the Civil District Court for the Parish of Orleans, suits by the City of New Orleans seeking recovery of occupational license taxes for occupations similar and identical with the occupation suggested to have been defendant's by the Grand Jury interrogation; that these suits include the following:

340-598	*City of New Orleans v. Philip James Melancon*	$1982.49
340-632	*City of New Orleans v. Dennis J. Melancon*	3982.30
337-291	*City of New Orleans v. August J. Mills, Jr.*	8778.00
342-835	*City of New Orleans v. Jules Cro[illegible]ito*	3750.00
350-474	*City of New Orleans v. Lucius Forsyth*	9000.00
350-611	*City of New Orleans v. Andrew Dominguez*	5985.39
338-078	*City of New Orleans v. Paul J. Portes*	

/s/ John P. Nelson, Sr.
Ass't District Attorney for the
Parish of Orleans
/s/ David A. Neuhauser
/s/ Milo B. Williams
Attorneys for August J. Mills, Sr.

CONSTITUTION OF THE UNITED STATES

AMENDMENT V, reading in part:

> "No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law * * * ".

AMENDMENT IX, reading:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people".

AMENDMENT XIV, Section 1, reading in part:

> " * * * No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its juirsdiction the equal protection of the laws".

LOUISIANA CONSTITUTION

Article XIX, Section 13.

"Any person may be compelled to testify in any lawful proceeding against any one who may be charged with having committed the offense of bribery and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings, except for perjury in giving such testimony."

LOUISIANA REVISED STATUTES

R.S. 14:121

"The offender, under the public bribery, bribery of voters or corrupt influencing articles, who states the facts under oath to the District Attorney charged with the prosecution of the offense, and who gives evidence tending to convict any other offender under those articles, may, in the discretion of such district attorney, be granted full immunity from prosecution in respect to the offense reported, except for perjury in giving such testimony."

R.S. 15:468

"Any person may be compelled to testify in any lawful proceeding against another charged with commercial bribery, public bribery, bribery of voters or corrupt influencing, and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or expose him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony."

R.S. 15:11, reading in part:

"Every court has the inherent power * * * to punish, as being a contempt, every interference with or disobedience of its process or orders * * * ".

ILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 75

AUGUST J. MILLS, SR.,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to the Supreme Court of Louisiana.

BRIEF FOR PETITIONER.

MILO B. WILLIAMS,
DAVID A. NEUHAUSER,
Counsel for Petitioner,
906 Carondelet Building,
New Orleans 12, Louisiana.

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IN THE

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No. 75

AUGUST J. MILLS, SR.,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to the Supreme Court of Louisiana.

BRIEF FOR PETITIONER.

CITATIONS TO OPINIONS BELOW

The refusal by the Supreme Court of Louisiana of the writs sought by petitioner March 3, 1958, not reported but appearing at folio 47 of the certified copy of the transcript of the record filed herewith, and Printed Record, page 51.

The dissenting opinion of Chief Justice John B. Fournet of the Supreme Court of Louisiana, March 3, 1958, appearing at folios 48 and 49 of the certified copy of the transcript of the record filed herewith, and Printed Record, page 51.

The judgment of Hon. J. Bernard Cocke, Judge of Section "E" of the Criminal District Court for the Par-

ish of Orleans, State of Louisiana, February 19, 1958, adjudging petitioner in contempt, appearing in the certified copy of transcript filed herewith at folios 33-38, and Printed Record, page 38.

JURISDICTION

The refusal by the Supreme Court of Louisiana of the writs sought was entered March 3, 1958, as appears from page 47 of certified copy of transcript of record filed herewith and page 51 of Printed Record. Such refusal is final in Louisiana. (*City of Gretna v. Rossner*, 154 La. 117, 97 So. 335) Application for a re-hearing is not permitted.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) as the said refusal is repugnant to the Constitution of the United States being in derogation of rights and privileges guaranteed by Amendments V, IX and XIV thereof.

Conceding that there is jurisprudence to the effect that the first ten Amendments to the Constitution of the United States are not operative in State Courts, (*Maxwell v. Dow*, 176 U.S. 581; 44 L. Ed. 597), we believe with Mr. Justice Harlan (*Huartado v. California*, 110 U.S. 568; 28 L. Ed. 246; *Maxwell v. Dow, supra* at pp. 608 and 607 respectively), and many others, that this jurisprudence originally resulted from a forgetfulness, (real or perhaps dictated by seasonable expedience), of the fact that when these Amendments were adopted

> " • • • the Constitution of each State, with few exceptions, contained and still contains a Bill of Rights, enumerating the rights of life, liberty and property which cannot be impaired by the legislative department."
>
> (Mr. Justice Harlan in the *Huartado* case, *supra.*),

and from the same forgetfulness of the fact that the first ten Amendments to the Constitution merely reaffirmed

> " * * * that the privileges and immunities enumerated in these Amendments belong to every citizen of the United States" and that "they were universally so regarded prior to the adoption of the Fourteenth Amendment."
>
> (Mr. Justice Harlan in *Maxwell v. Dow, supra.*)

By no rule of reason can it be thought that an acknowledged pre-existing state of facts could be so abruptly changed by the adoption of an Amendment (XIV) the very language of which confirms the existence of these facts. Times have changed. There can be no cause now for any adroitly specious reasoning continuing the formerly expedient denial of rights and privileges existing, in what is now the United States, since the landing of the Pilgrim Fathers and which rights were vigorously reaffirmed in 1791.

QUESTIONS PRESENTED

1. Whether the conviction of petitioner for contempt of court resulting from his refusal to answer certain questions before the Grand Jury of the Parish of Orleans, State of Louisiana and after having invoked his constitutional privileges, (Transcript of Record, folios 11-14; Printed Record, pp. 10-14) is repugnant to Amendments V, IX and XIV of the Constitution of the United States of America.

1a. Whether said conviction is repugnant to Amendments V and IX of the United States Constitution, when the answers to questions propounded (Transcript of Record, folios 11-14; Printed Record, pp. 10-14) might have furnished foundation for criminal and civil actions in

the United States Courts against petitioner. (Transcript of Record, folios 29-32; Printed Record, pp. 10-14)

2. Whether the admitted cooperation between the State District Attorney (Parish of Orleans, Louisiana) and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, folio 16; Printed Record, pp. 15-16), the attendant widespread newspaper, television and radio publicity, (Transcript of Record, folio 15; Printed Record, p. 15), the insinuating tenor of the questions propounded, (Transcript of Record, folios 11-14; Printed Record, pp. 10-14) and the nature of the setting wherein they were propounded (Transcript of Record, folios 11-14; Printed Record, pp. 10-14) justified petitioner in invoking his constitutional privileges against self-incrimination.

3. Whether Section 13, Article XIX, Louisiana Constitution, L.S.A.-R.S. 14:121 and L.S.A.-R.S. 15:468 (Transcript of Record, folios 20-24; Printed Record, pp. 20-26) are repugnant to Section 1, Amendment XIV of the Constitution of the United States in that the purported immunity granted by said statutes is fictitious and restricted, leaving petitioner open to a wide variety (Municipal, State and Federal) of actions (criminal and civil) against him and thereby abridging the privileges and immunities guaranteed him as a citizen of the United States (Transcript of Record, folios 29-32; Printed Record, pp. 33-37).

4. Whether the judgment rendered February 19, 1958 (Transcript of Record, folios 33-38; Printed Record, pp. 38-44) ordering petitioner to answer questions propounded by Grand Jury concerning public bribery was repugnant to Amendments V, IX and XIV of the United States Constitution in that it would force petitioner to testify in effect against himself, he having been

indicted for conspiracy to commit public bribery February 12, 1958. (Transcript of Record, folio 44; Printed Record, p. 49)

STATUTES INVOLVED

Amendments V, IX and XIV (Section 1) of the Constitution of the United States; (Printed Record, pp. 18-19) Article XIX, Section 13, of the Louisiana Constitution; (Printed Record, p. 21) Louisiana Revised Statutes —L.S.A.-R.S. 14:121, R.S. 15:468, and R.S. 15:11. (Printed Record, pp. 21-23)

STATEMENT OF CASE

On January 15, 1958 petitioner appeared before the Orleans Parish Grand Jury and refused to answer certain questions, claiming his "Constitutional Rights, both Federal and State," (Transcript of Record, folios 1, 11, 12, 13 and 14; Printed Record, pp. 1, 10-14) and also stating his fear of "a civil suit or something like that." (Transcript of Record, folios 1 and 13; Printed Record, p. 12)

On January 22, 1958 (Transcript of Record, folios 9-14; Printed Record, pp. 8-14), the Grand Jury for the Parish of Orleans, State of Louisiana, filed a motion seeking to have petitioner adjudged in contempt for declining to answer said questions.

On February 10, 1958, petitioner filed an answer (Printed Record, p. 33) to the motion and rule for contempt in which he averred, among other things, that

> (a) Being compelled to answer the questions under the circumstances and surroundings and fact existing at the time they were propounded would be an abridgement and denial of his

rights under Amendments V, IX and XIV of the Constitution of the United States;

(b) Petitioner and his wife had been and were under investigation by the United States Revenue Service and others; had been required to sign waivers of prescription; and, at the time of the questions, eleven indictments had been returned by the United States Grand Jury against members of the New Orleans Police Department, three for income tax evasion and eight for perjury or false statements; (Transcript of Record, folios 15-16; Printed Record, pp. 14-15).

(c) The so-called immunity extended by the District Attorney is limited strictly to offenses against bribery statutes and does not extend to anything else, is purely conditional, not binding on any successor, and, consequently, if petitioner were forced to answer the questions declined, and those that would inevitably follow, it would be a violation of the provisions of the Constitution of the United States, particularly Section 1 of Amendment XIV thereof; (Transcript of Record, folios 22-23 and 32; Printed Record, pp. 24-26 and 36).

(d) The cooperation existing between the District Attorney for the Parish of Orleans, the Police Bureau of Investigation, the United States Attorney for the Eastern District of Louisiana, the Internal Revenue Service of the United States and its investigators, as attested by the eleven Federal indictments noted above in paragraph (b), the sixty odd criminal cases

(not bribery) filed in the Criminal District Court for the Parish of Orleans against individuals allegedly engaged in business similar to that insinuated to petitioner; the seven suits for occupational licenses, for business similar to that insinuated to petitioners, each for well over a thousand dollars, on file in the Civil District Court for the Parish; and, the insinuating tenor of some of the questions propounded with reference to petitioner's son and brother were **facts and circumstances** ample to cause petitioner to fear that any answer to the questions propounded, and others that would inevitably follow, might tend to incriminate him and afford a link in a chain of evidence which could become the basis of proceedings, criminal and civil, against him under the laws of the United States and the State of Louisiana for matters unrelated to bribery and for which there existed no immunity statutes, and ample cause for him to declare that forced answers would be an abridgement of his constitutional rights under Amendments V, IX and XIV of the Constitution of the United States. (For District Attorney cooperation, etc. see Transcript of Record, folio 16; Printed Record, pp. 15-16). For insinuating questions,—Transcript of Record, folios 11-12; Printed Record, pp. 11-12, Unenumerated Rights—Transcript of Record, folio 25—Printed Record, pp. 28-32.)

(e) Any doubt should be resolved in favor of petitioner (*Quinn v. U. S.*, 75 S. Ct. 668, *Hoffman v. U. S.*, 341 U.S. 479) or the very pur-

pose of the privilege would be frustrated. (32 L.R.A. 133).

On February 10, 1958, an agreed Stipulation of Facts was filed, (Transcript of Record, folios 9-17, Printed Record, pp. 8-17), the matter was argued, taken under advisement, and, on February 19, 1958, Judge J. Bernard Cocke of Section "E" of the Criminal District Court for the Parish of Orleans, State of Louisiana, rendered a judgment (Transcript of Record, folios 33-38; Printed Record, pp. 38-44) ordering petitioner to answer the questions propounded by the Grand Jury, to which ruling petitioner seasonably reserved Bill of Exception No. 1 (Transcript of Record, folio 39) reiterating his plea of the ruling's repugnance to Amendments V, IX and XIV of the Constitution of the United States. Petitioner again declined to answer the questions for the same reasons, was adjudged in contempt, filed a Motion for a New Trial (Transcript of Record, folio 41; Printed Record, p. 46) which was overruled and Bill of Exception No. 2 reserved, reiterating former pleas, (Transcript of Record, folio 42; Printed Record, p. 47), was sentenced to serve ten (10) days in the Parish Prison, pay a fine of $100.00, and in default thereof serve an additional ten (10) days (Transcript of Record, folio 5; Printed Record, p. 5) and filed Notice of Intention to Apply for Writs (Transcript of Record, folios 5 and 43; Printed Record, pp. 5 and 49).

One week prior to conviction and sentencing of petitioner, February 12, 1958, the Grand Jury for the Parish of Orleans found an indictment against him for conspiring with others "to commit the crime of Public Bribery" which was filed with the Criminal District Court for the Parish of Orleans under No. 159-238. (Transcript of Record, folio 44; Printed Record, p. 49)

Application for Certiorari, Mandamus and Prohibition was filed with the Supreme Court of Louisiana February 25, 1958 (Transcript of Record, folio 1; Printed Record, p. 1) urging, among other things, the repugnance of the ruling and judgment of the District Court to Amendments V, IX and XIV of the Constitution of the United States.

On March 3, 1958 the Supreme Court of Louisiana refused the writs, Chief Justice John B. Fournet and Justice James D. Simon dissenting. (Transcript of Record, folio 47; Printed Record, p. 51). Chief Justice Fournet filed a dissenting opinion (Transcript of Record, folios 48-49; Printed Record p. 51) in which he said:

> "Moreover, it is my opinion that the relator is entitled to the protection offered by the 5th and 14th amendments to the Constitution of the United States under the showing made".

On March 3, 1958 a Motion For Stay of Execution was filed with the Supreme Court of Louisiana and petitioner was granted 90 days within which to petition the Supreme Court of the United States for writ of certiorari, contingent upon bond for $200.00 being furnished, (Transcript of Record, folios 50-52) and the bond was so furnished. (Transcript of Record, folio 53)

ARGUMENT

1. The conviction and sentencing of petitioner (Transcript of Record, folios 5 and 33-38; Printed Record, pp. 5 and 38-44) for contempt violates his privilege against self-incrimination (U.S. Const. Amend. V) because:

> (a) The questions he declined to answer, (Transcript of Record, folios 1, 11-14; Printed Record,

pp. 1 and 10-14) and those that inevitably would have followed, were such that the answers thereto not only would have subjected him to possible criminal prosecution in the courts of the United States, but, also, would have tended to incriminate him.

> "Privilege against self-incrimination is not limited to admissions that would subject witness to criminal prosecution but also extends to admissions that might only tend to incriminate. U.S.C.S. Const. Amend. 5."
> *Emspak v. U. S.*, 75 S. Ct. 687.

(b) Answers to questions propounded "could have well furnished" links "in the chain of evidence needed to prosecute the witness for a federal crime", (quotes from *Emspak* case, *supra* and *infra*), especially when petitioner had signed waivers of prescription with Federal authorities. (Transcript of Record, folios 15-16; Printed Record, pp. 14-17)

> "Questions concerning witness' associations fell within scope of privilege against self-incrimination, where to have revealed knowledge about named individuals, all of whom had been previously charged with the Communist affiliations, could have well furnished a link in the chain of evidence needed to prosecute the witness for a federal crime, ranging from conspiracy to violate Smith Act to filing of false non-communist affidavit under Taft-Hartley Act.
>
> " 'To sustain the privilege', this Court has recently held, 'it need only be evident from the implications of the question, in the setting in which it is asked, that a respondent answer to the question or an explanation of why it can-

not be answered might be dangerous because injurious disclosure could result', and nearly 150 years ago Chief Justice Marshall enunciated a similar test: 'Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself'."

Emspak v. U. S., supra.

(c) Petitioner is the sole judge of whether the answers would criminate him, he alone knowing what they would be.

"* * * if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, **it must rest with himself,** who alone can tell what it would be, to answer the question or not. If in such a case, he says upon his oath that his answer would criminate himself, **the court can demand no other testimony of the fact."**

Chief Justice Marshall in:

U. S. v. Aaron Burr, Fed. Cas. No. 14,692e. (emphasis ours)

2. The admitted cooperation between the State District Attorney and various Federal agencies with regard to investigation of public bribery and income tax evasion, (Transcript of Record, folio 16; Printed Record, pp. 15-16), the raging newspaper, television and radio publicity concerning this investigation, (Transcript of Record, folio 15; Printed Record, p. 15), the insinuating tenor of the questions propounded, (Transcript of Record, folios 11-14; Printed Record, pp. 10-14), and the inquisitorial nature of the setting wherein they were propounded

(Transcript of Record, folios 11-14; Printed Record, pp. 10-14) were such facts and circumstances as to cause petitioner to fear that any answers might be found to be incriminating, (*Emspak v. U. S., supra*), and that the privilege against self-incrimination was under wrongful attack.

> "It is when the privilege of self-incrimination is **under attack** by those who **wrongfully conceive** of it as merely a **shield for the guilty** that **governmental bodies must be most scrupulous in protecting its exercise.**" (Emphasis ours)
> *Quinn v. U. S., supra.*

3. (a) Section 13, Article XIX of the Constitution of the State of Louisiana (Printed Record, p. 21; Transcript of Record, folio 20) limits the immunity offered petitioner to the non-use, "in any judicial proceedings", of his testimony given "in any lawful proceeding against any one who may be charged with having committed the offense of bribery" (Quotes from Art. XIX, sec. 13, La. Const.), and any other interpretation or application, such as the herein judgment and conviction, is repugnant to Section 1, Amendment XIV, U. S. Constitution, and abridges petitioner's privilege of due process of law and his privilege against self-incrimination, each of which, among others, he enjoys as a citizen of the United States, because the proceeding at which petitioner's testimony was sought was a Grand Jury investigation and NOT a proceeding against any one "**charged** with having committed the **offense** of **bribery**" (Quotes from Art. XIX—emphasis ours) or any other offense. (Transcript of Record, folios 11-14; Printed Record, pp. 10-14)

(b) The immunity offered by L.S.A.-R.S. 14:121 (Printed Record, pp. 21-22; Transcript of Record, folio 20) is limited to "the **offender,** under the public bribery etc. articles" who gives a sworn statement to the "**Dis-**

trict Attorney charged with the **prosecution** of the **offense"** (Emphasis ours), and who later "gives evidence tending to convict any other offender under those articles"; and the granting of this immunity is solely "at the discretion of said district attorney" and **only** for "the offense reported". (All quotes from R.S. 14:121; emphasis ours). From the Stipulation of Facts (Transcript of Record, folios 9-17; Printed Record, pp. 8-17) and the entire record herein it is apparent that the petitioner was NOT an "offender", the Grand Jury was NOT "the District Attorney", and the District Attorney was NOT engaged "with the prosecution of the offense". Interpreting R.S. 14:121 as applicable herein is certainly enforcing a law which abridges the privileges and immunities enjoyed by petitioner, (among which are those against self-incrimination and those unenumerated rights guaranteed by Amendment IX of the U. S. Constitution), and such interpretation is repugnant to Section 1, Amendment XIV of the U. S. Constitution.

(c) L.S.A.-R.S. 15:468 (Printed Record, pp. 22-23) is just as specific, stating that a "person may be compelled to testify" but **only** "in any lawful proceeding against another charged with commercial bribery, etc." As pointed out above, the attempt to make petitioner's refusal to answer not justified by these statutes is a flagrant abridgement of his constitutional privileges and immunities.

By no stretch of the imagination can these statutes be said to grant immunity for offenses against municipalities, states or the Federal government, and the law books and reports are replete with authorities to the effect that a witness is not guilty of contempt when the only security offered is of such nebulous and impossible nature.

"Although there are some earlier cases to the contrary, it is generally held that, under **immunity statutes providing only that testimony** given by a witness **shall not be used against him** in a criminal prosecution, one may stand upon his constitutional guaranty against being compelled to give incriminatory testimony and **refuse to testify when his testimony might furnish leads** to other testimony which would convict him." (Emphasis ours)

58 Am. Jur. Witnesses p. 76, Sec. 90 (and numerous cases cited, including *Arndstein v. McCarty*, 245 U.S. 71, 65 L. Ed. 138; *Counselman v. Hitchcock*, 142 U.S. 547, 35 L. Ed. 1110)

"But by the **weight of authority** and **better reason,** he will **not be compelled** to answer if the **only security** he has is that his **testimony** will **not be used against him,** since it may disclose **offenses hitherto unknown** and lead to the discovery of other evidence whereby he may be convicted." (Emphasis ours)

24 L.R.A., NS, 168, (citing *Counselman v. Hitchcock, supra,* and others).

" 'To sustain the privilege' this Court has recently held, 'it need only be evident from the implications of the question, in the setting in which it is asked, that a **respective answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result'.** And nearly 150 years ago Chief Justice Marshall enunciated a similar test: 'Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of **the rule that no witness is compelled to furnish any one of them against himself'.**"
Emspak v. U. S. (supra)

From the foregoing citations it is apparent that the constitutional guaranty against self-incrimination is far reaching; that it must be accorded a liberal construction (*Hoffman v. U. S., supra*), especially when it is under attack through a wrong conception of its true meaning. (*Quinn v. U. S., supra*)

As far back as *U. S. v. Aaron Burr*, Fed. Cas. No. 14,692e (see also *Ex parte Butt*, 93 S.W. 992), Chief Justice Marshall announced:

> " * * * if the question be of such description that an answer to it may or may not criminate the witness, according to the purport of that answer, **it must rest with himself,** who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath that his answer would criminate himself, **the court can demand no other testimony of the fact".**

And, even though it has been shown in 24 L.R.A., NS, 169 (citing *Ex parte Butt, supra,* and *Ex parte Senior*, 32 L.R.A. 133) that:

> "A witness cannot be required to show how an answer will criminate him, otherwise the **purpose of the privilege would be frustrated"**

we will show by possible hypothetical cases what far reaching injury could result from the denial of this constitutional privilege to a witness.

EXAMPLE 1. Witness X, before a Grand Jury investigating public bribery is told that he has immunity under the statutes noted above, and the following ensues:

Q. Do you know police officers A & B?

A. Yes.

Q. Did you ever give them any money?
A. Yes.

Q. For what purpose?
A. So they wouldn't raid my gambling house.

What happens now? X is not charged with bribery but he is charged with R.S. 14:90, the gambling statute. His testimony is not used against him but the testimony of A. and B. is, together with such other evidence as might have been discovered as a result of his answers to the Grand Jury. Result? X is convicted of an offense of which the Grand Jury had no knowledge until drawn from X under pretext of immunity.

EXAMPLE 2. Policeman A has been shot and killed by a person or persons unknown. Witness X appears before a Grand Jury investigating public bribery. He is lulled into a sense of security with the immunity routine and this ensues:

Q. Did you ever pay any money to any policeman?
A. Yes.

Q. To whom?
A. Policeman A.

Q. Why?
A. So he wouldn't raid my handbook?

Q. What did he do with the money?
A. He didn't do anything but raise hell that it wasn't enough.

Q. Did you give him any more?
A. No. He started to arrest me and I shot him.

Need anything more be added save but to observe that,

except for this blanket of spurious immunity with which the Grand Jury wrapped witness X, the killer of policeman A would still be a person unknown.

EXAMPLE 3. This is based on an actual question appearing on page 2 of Exhibit A which defendant refused to answer claiming his U. S. and State Constitutional rights. The question will appear as propounded by Mr. Nelson, Assistant District Attorney, and the answer will be as it might have been after District Attorney Hubert extended the restricted immunity on page 11 of Printed Record.

Q. Mr. Mills, as you already know, this Jury is inquiring into the lottery operation from 1950 to 1955 and that is what we would like to talk to you about. What was your employment from 1950 to 1955?

A. I had the Golden Bell Lottery.

What harm could result from that answer? A very considerable harm. Acting on the information that Mills operated under the trade name Golden Bell, investigators checked the records and discovered that he had not registered as an individual operating under a trade name as required by R.S. 51:281. Thereupon, charges are filed against Mills for violation of R.S. 51:281, the number of said charges being restricted only by the number of dates and locations uncovered by the investigators. And these charges would never have been made but for the information given by Mills under the supposed cloak of immunity.

It is suggested that this is a remote possibility? Not so! The records of the Criminal District Court for the

Parish of Orleans show that the identical thing happened in over sixty cases:

State of Louisiana v. Jules Crovetto,
Nos. 149-288 through 298;
State of Louisiana v. Michael Callia,
Nos. 149-340 through 351;
State of Louisiana v. L. Forsyth,
Nos. 149-434 through 450;
State of Louisiana v. Harold Mills,
Nos. 149-505 through 516;
State of Louisiana v. A. J. Mills, Jr.,
Nos. 149-277 through 288.

All of these are prosecutions for violation of R.S. 51:281. With this array of cold, hard facts confronting him, can the witness be blamed for invoking his Constitutional rights and declining to answer? And, in the face of the pronouncements of the Supreme Court of the United States from the time of Chief Justice Marshall (*Burr* case, *supra*) to the present time (*Emspak v. U. S., supra*) can the witness be adjudged in contempt for invoking his privilege? We submit that his rights cannot thus be abridged, and "the purpose of the privilege" thus "frustrated". (*Ex parte Senior, supra*)

4. The judgment complained of was rendered February 19, 1958. (Transcript of Record, folios 33-38; Printed Record, pp. 38-44) One week prior thereto, February 12, 1958, petitioner was indicted for conspiracy to commit public bribery. (Transcript of Record, folio 44; Printed Record pp. 49-50) The judgment and sentence speak for themselves as a flagrant attempt to impinge upon the Constitutional guaranties which petitioner had invoked. (Amendment V, U. S. Const.)

5. Amendment IX, U. S. Const. reads:

"The enumeration in the Constitution of certain

rights shall not be construed to deny or disparage others retained by the people".

"The Ninth Amendment announces and acknowledges in a single sentence that (1) the individual, and not the State, is the source and basis of our social compact and that sovereignty now resides and has always resided in the individual; (2) that our Government exists through the surrender by the individual of a portion of his naturally endowed and inherent rights; (3) that every one of the people of the United States owns a residue of individual rights and liberties which have never been, and which are never to be surrendered to the State, but which are still to be recognized, protected and secured; and (4) that individual liberty and rights are inherent, and that such rights are not derived from the Constitution but belong to the individual by natural endowment". (*The Forgotten Ninth Amendment*, p. 1, Bobbs-Merrill, publishers)

The Ninth Amendment applies to the States. (*Eilendecker v. District Court*, 134 U.S 31, 33 L. Ed. 801; *Palko v. Connecticut*, 302 U.S. 319, 82 L. Ed. 288).

What are some of the unenumerated rights? Since there is no list of them, we must resort to hypothesis.

> "It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such right, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a depotism."
>
> *Savings & Loan Assn. v. Topeka*, 87 U.S. 686, 22 L. Ed. 455
>
> *Everson v. Bd. of Education*, 330 U.S. 1, 91 L. Ed. 711 (718).

Suppose that Louisiana or any other State should enact a statute providing for imprisonment for ordinary debt. There is no guaranty in either the U. S. or Louisiana Constitutions which prohibits imprisonment for debt, but is there any doubt but that the Supreme Court of Louisiana, and certainly the United States Supreme Court would declare such a statute void?

(*Forgotten Ninth Amendment*, pp. 51-52 (*supra*).

"The right of privacy may be such a right. If there is such a right, it is difficult to classify it under any right that is enumerated in the Constitution. This is a right which is of comparatively recent recognition. Some courts call it a fundamental right. While the courts seem to feel that it should exist, there is a great timidity and lack of forthrightness in the protection of this right, because its existence is not to be found in the written and enumerated law."

The Forgotten Ninth Amendment, p. 55 (*supra*).

Suppose Louisiana or any State should enact a statute enabling one with a fancied claim against another to require that other person to disclose to him all details of their transactions PRIOR to the filing of a suit. There is no prohibition in any Constitution against such ridiculous procedure, but the right of privacy as to business transactions until aired by **due process of law** is inherent in all individuals. Is there any doubt as to what the Supreme Courts would do with such a statute?

Yet, that is exactly the situation here. If petitioner were forced, under the provisions of the Louisiana Constitution and Revised Statutes relied upon by the Grand Jury for the Parish of Orleans, to answer the question about his occupation during 1950 to 1955 (Transcript of Record, folio 13; Printed Record, p. 13) and other ques-

tions that would have followed, the provisions relied upon by the Grand Jury would in effect become just such a hypothetical statute as suggested above, for petitioner might lay himself open to a multiplicity of legal actions, including suits by the United States Government for income tax, gambling tax, gambling stamp, etc. etc., which never would have been instituted but for his answer extracted under that cloak of fancied immunity.

That this is not a remote possibility is shown by the Docket of the Civil District Court for the Parish of Orleans containing suits for occupational license for occupations similar to that suggested by the questions propounded to defendant, with the following numbers, names and amounts:

340-598
City of New Orleans v. Philip James Melancon $1982.49

340-632
City of New Orleans v. Dennis J. Melancon 3982.30

337-291
City of New Orleans v. August J. Mills, Jr. 8778.00

342-835
City of New Orleans v. Jules Crovetto 3750.00

350-474
City of New Orelans v. Lucius Forsyth 9000.00

350-611
City of New Orleans v. Andrew Dominguez 5985.39

338-078
City of New Orleans v. Paul J. Portes .....

(Printed Record, pp. 16-17)

It is certainly not contempt to repulse this adroitly circumlocutory invasion of the inherent right of privacy guaranteed by Amendment IX of the U. S. Constitution.

CONCLUSION

For the foregoing reasons, and because

> "The constitutional guaranty against self-incrimination must be accorded **liberal construction in favor of the right** it is intended to secure." (Emphasis ours)
>
> *Hoffman v. U. S.*, 341 U.S. 479, 95 L. Ed. 1118.

it is submitted that the judgment of the Supreme Court of Louisiana should be reversed and the cause remanded in order that petitioner be discharged without date.

Respectfully submitted,

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New Orleans 12, Louisiana.

CERTIFICATE OF SERVICE

MILO B. WILLIAMS, Attorney, and a member of the Bar of this Court hereby certifies that a copy of the above Brief has been served on Richard A. Dowling, Esq., District Attorney for the Parish of Orleans, and upon Jack P. F. Gremillion, Esq., Attorney-General for the State of Louisiana by United States Mail by depositing same in the United States Mailbox with first-class postage pre-paid, addressed to said counsel at their respective postoffice addresses.

MILO B. WILLIAMS,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

Nos. 74 AND 75.—OCTOBER TERM, 1958.

Henry J. Mills and Osmond J. Litolff, Petitioners, 74 *v.* State of Louisiana. August J. Mills, Sr., Petitioner, 75 *v.* State of Louisiana.	On Writs of Certiorari to the Supreme Court of Louisiana.

[June 8, 1959.]

PER CURIAM.

The judgments are affirmed. *Knapp* v. *Schweitzer*, 357 U. S. 371.

MR. JUSTICE BRENNAN joins the Court's opinion, reiterating his belief, expressed in *Knapp* v. *Schweitzer*, 357 U. S. 371, 381, that reconsideration of the holding in *Feldman* v. *United States*, 322 U. S. 487, is inappropriate in this case. He also reiterates his belief that nothing in this decision forecloses reconsideration of the *Feldman* holding in a case presenting the issue presented by *Feldman*.

SUPREME COURT OF THE UNITED STATES

NOS. 74 AND 75.—OCTOBER TERM, 1958.

Henry J. Mills and Osmond J. Litolff, Petitioners, 74 v. State of Louisiana.	On Writs of Certiorari to the Supreme Court of Louisiana.
August J. Mills, Sr., Petitioner, 75 v. State of Louisiana.	

[June 8, 1959.]

MR. CHIEF JUSTICE WARREN, with whom MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS concur, dissenting.

In *Knapp* v. *Schweitzer*, 357 U. S. 371, the Court left open the question whether in the case of collaboration between state and federal officers a witness could successfully assert the federal privilege against self-incrimination in a state proceeding. In my view, that question should be answered here for the records in these cases show such collaboration. Yet the majority of the Court ignores the question in affirming without opinion. Therefore, although I agree with and join the dissenting opinion of MR. JUSTICE DOUGLAS, I add these additional views.

The petitioners in these cases were held in contempt for failure to answer questions before a state grand jury investigating the bribery of police officials of New Orleans by persons conducting lottery operations within that city. From the nature of the questions asked petitioners, it is evident that they were suspected of engaging in lotteries and giving bribes. The District Attorney of the Parish of Orleans, under authority granted by state statute, offered petitioners full immunity from state prosecution for crimes, other than perjury, uncovered by the questioning. Nevertheless, petitioners refused to answer ques-

tions relating to bribery and their connections with lottery operations, pleading in justification of this refusal the federal privilege against self-incrimination.

The contempt proceedings and the state court reviews were had upon an agreed statement of facts. These stipulations recited that during the pendency of the state grand jury investigation "the Intelligence Division, Internal Revenue Service of the United States, the United States Attorney for the Eastern District of Louisiana and the United States Grand Jury [had] been for several months and [were then] engaged in investigating some of the members of the New Orleans Police Department for income tax evasion, a felony under the laws of the United States." In addition, the parties agreed that these investigations were well publicized and that, at the time of the instant proceedings, a number of federal income tax indictments had been returned against police officers. Further, it was established that each of the petitioners had been requested to execute, and had executed, waivers of the statute of limitations on their federal tax liabilities for most of the years in question. Lastly, the parties stipulated:

> "That there has existed, and now exists [at the time of the State proceeding], cooperation and collaboration between the District Attorney for the Parish of Orleans and the United States Attorney for the Eastern District of Louisiana and the Internal Revenue Service of the United States of America and its investigators, as well as with the Police Bureau of Investigation of the City of New Orleans in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion and that the Honorable Leon D. Hubert, Jr., District Attorney for the Parish of Orleans, has held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the

part of certain members of the New Orleans Police Department and income tax evasion, felonies under the law of the United States of America and the State of Louisiana."

In *Knapp* v. *Schweitzer*, *supra*, which decided that the federal privilege against self-incrimination may not ordinarily be raised in a state proceeding, the Court said:

> "Of course the Federal Government may not take advantage of this recognition of the States' autonomy in order to evade the Bill of Rights. If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a federal prosecution, see *Byars* v. *United States*, 273 U. S. 28. Whether, in a case of such collaboration between state and federal officers, the defendant could successfully assert his privilege in the state proceeding, we need not now decide, for the record before us is barren of evidence that the State was used as an instrument of federal prosecution or investigation. Petitioner's assertion that a federal prosecuting attorney announced his intention of cooperating with state officials in the prosecution of cases in a general field of criminal law presents a situation devoid of legal significance as a joint state and federal endeavor." 357 U. S., at 380.

I dissented from that decision on the ground that the state court had decided that the federal privilege did not obtain on the seemingly false premise that information adduced in the state proceeding could not be used against the petitioner in a subsequent federal prosecution. But even accepting, for the purpose of argument, the validity of the *Knapp* result, I am of the view that the question which was not answered there should be considered here and resolved in favor of the petitioners.

The *Knapp* decision when taken in conjunction with *Feldman* v. *United States*, 322 U. S. 487, means that a person can be convicted of a federal crime on the basis of testimony which he is compelled to give in a state investigation. This opens vast opportunities for calculated efforts by state and federal officials working together to force a disclosure in a state proceeding and to convict on the basis of that disclosure in a federal proceeding. Such opportunities will not go unused unless the courts are vigilant to protect the rights of persons who find themselves faced with such coaction of federal and state prosecuting agencies. Such vigilance becomes increasingly required as the Federal Government, through prosecutions for tax evasion, moves into the criminal areas regulated by the States.*

In the instant case the record shows clearly that state and federal authorities had launched a coordinated investigation into the suspected bribery by gamblers of New Orleans' police officers. The State was interested primarily in the enforcement of its public bribery statutes. The Federal Government sought to apprehend tax evaders. The state and federal agencies involved in this two-fold investigation collaborated to obtain desired ends. Policemen suspected of taking bribes and gamblers suspected of giving them were called for questioning. Both were in jeopardy of prosecution: the police under state statute for taking bribes and under federal statute for income tax evasion; the gamblers under state statute for giving bribes and under federal statutes for income tax evasion and for failure to pay the special stamp and excise taxes levied on gambling operations. Doubt which might

*Cf. *Commissioner* v. *Wilcox*, 327 U. S. 404; *Rutkin* v. *United States*, 343 U. S. 130; *United States* v. *Calamaro*, 354 U. S. 351; *Rollinger* v. *United States*, 208 F. 2d 109; *Berra* v. *United States*, 221 F. 2d 590; *Schira* v. *Commissioner*, 240 F. 2d 672; *United States* v. *Wampler*, 5 F. Supp. 796; *United States* v. *Iozia*, 104 F. Supp. 846.

have existed concerning federal interest in petitioners' possible tax evasions was removed when petitioners were induced to waive the statute of limitations for relevant tax years.

The opinion in the *Knapp* case states that the protection of the Fifth Amendment comes into play if a federal officer is a party to the compulsion of testimony by a state agency. 357 U. S. 371, 380. The threshold question then is whether the requisite relationship existed between the State District Attorney and the United States Attorney and Internal Revenue agents. The stipulation, when read in the light of the known facts, adequately shows that federal officers participated in the state action which sought to compel the testimony of petitioners. That stipulation, signed by the state prosecutor, admits of "cooperation," "collaboration," and "conferences." These terms viewed against the background of contemporaneous investigations by a federal grand jury, a state grand jury, the Police Bureau of Investigation of the City of New Orleans, and the Intelligence Division of the Internal Revenue Service, all pointed at a group of persons which included petitioners, requires the conclusion that the State was used as an instrument of federal investigation.

I come then to the question left open in the *Knapp* case: whether, where, as here, a State is used as an instrument of federal investigation, witnesses can successfully assert their federal privilege against self-incrimination in state proceedings. *Knapp* v. *Schweitzer*, *supra*, suggests that where testimony is compelled in such circumstances, the testimony would be inadmissible in a subsequent federal prosecution. See *Byars* v. *United States*, 273 U. S. 28. See also *Feldman* v. *United States*, 322 U. S. 487, 494. But this is only partial protection. To compel testimony in a federal investigation, a witness must be assured at the outset complete immunity from any prose-

cution which might result from his compelled disclosures. *Counselman* v. *Hitchcock*, 142 U. S. 547; *Brown* v. *Walker*, 161 U. S. 591; *Blau* v. *United States*, 340 U. S. 159; *Ullmann* v. *United States*, 350 U. S. 422, 430. There is no indication that such protection obtains here—that petitioners are protected from federal prosecutions which might result from their testimony even though that testimony is not admissible in the subsequent proceeding. *Byars* v. *United States*, *supra*, merely prohibits the introduction of illegally seized evidence and *Knapp* v. *Schweitzer*, *supra*, and *Feldman* v. *United States*, *supra*, speak merely of the non-use of the compelled testimony in a subsequent federal prosecution. None of these cases deals with the fruits of the compelled testimony, and defendants, like petitioners, who are forced to testify under circumstances similar to those here present, are left without the protection against self-incrimination intended by the Constitution. These cases, in my opinion, should be extended to prohibit any prosecution resulting from disclosures compelled under circumstances similar to those which exist here. But this is not an established principle and a witness is entitled to more than hopes of immunity when federal agencies seek to compel incriminatory testimony. Therefore, in my view, petitioners properly invoked their federal privilege against self-incrimination in the present proceeding and the contempts should be discharged. Cf. *Rea* v. *United States*, 350 U. S. 214; *Barthus* v. *Illinois*, 359 U. S. 121, 164 (dissenting opinion).

SUPREME COURT OF THE UNITED STATES

Nos. 74 AND 75.—OCTOBER TERM, 1958.

Henry J. Mills and Osmond J. Litolff, Petitioners, 74 *v.* State of Louisiana.	On Writs of Certiorari the Supreme Court of Louisiana.
August J. Mills, Sr., Petitioner, 75 *v.* State of Louisiana.	

[June 8, 1959.]

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACK concur, dissenting.

Petitioners in these cases were summoned before a state grand jury in New Orleans and interrogated concerning bribery of public officials and income tax evasion. They were at the time being investigated by the Federal Internal Revenue Service. Accordingly, they objected to the questions, invoking the Fifth Amendment and stating that the answers to the questions would tend to incriminate them. Their objections were overruled and they were held in contempt for refusal to answer. The Supreme Court of Louisiana refused writs of certiorari, mandamus, and prohibition, finding "no error of law in the ruling complained of." The cases are here on petitions for certiorari. 358 U. S. 810.

It has been the prevailing view since *Twining* v. *New Jersey*, 211 U. S. 78, that the guaranty of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself" is not made applicable to the States through the Fourteenth Amendment. *Adamson* v. *California*, 332 U. S. 46. Under the *Twining* rule, the Louisiana courts, therefore, need not bow to the

Fifth Amendment as a requirement read into state law by the Bill of Rights.

That is not, however, the end of our problem. For the question remains whether a state court can override a claim of *federal* right seasonably raised in the state proceeding, when the failure to recognize the *federal* right will result in its destruction or nullification.

The classical case involves a *federal* right in the conduct of a business, as in the case of the contractor in *Leslie Miller, Inc.* v. *Arkansas*, 352 U. S. 187, who, having been the successful bidder for federal construction work, could not be subjected to conflicting state licensing requirements. Related cases are in the class of *Service Storage & Transfer Co.* v. *Virginia*, 359 U. S. 171, and *Castle* v. *Hayes Freight Lines*, 348 U. S. 61, which hold that an interstate motor carrier certificate issued by the Interstate Commerce Commission could not be overridden in state proceedings. Litigants asserting federal rights as the basis of a claim (*Testa* v. *Katt*, 330 U. S. 386) or as a defense to a claim under state law (*Miles* v. *Illinois Central R. Co.*, 315 U. S. 398) may do so in state courts which must recognize and protect the federal rights. Chief Justice White stated it as the "duty resting upon" state and federal courts "to protect and enforce rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arose." *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U. S. 211, 223. Litigants, resting on a *federal* right, need not resort to federal courts to protect those rights where those rights are put in jeopardy in state proceedings.

There is no more apt illustration of that principle than the present case. The Fifth Amendment to the Constitution reserves a twofold *federal* guarantee for every citizen. It protects him from being forced to give testimony in any federal proceeding, criminal or civil (*Counselman*

v. *Hitchcock*, 142 U. S. 547, 562; *McCarthy* v. *Arndstein*, 262 U. S. 355, 266 U. S. 34), judicial, investigative or administrative (*Quinn* v. *United States*, 349 U. S. 155, 161; *Smith* v. *United States*, 337 U. S. 137), which might tend to incriminate him. And it also assures that no incriminating information adduced from a defendant involuntarily by anyone, anywhere, may be admitted into evidence against him in any federal prosecution. *Bram* v. *United States*, 168 U. S. 532; *Wan* v. *United States*, 266 U. S. 1. It was to this second principle that the ruling of this Court in *Feldman* v. *United States*, 322 U. S. 487, was unfaithful. As long as that decision is adhered to, the evidence obtained in a state proceeding such as the one in this case can be used in a federal prosecution. It is, therefore, too late to protect the *federal* right if one waits for action by the federal court. The *federal* right is lost irretrievably, if it is not saved by the state court. As stated by the Supreme Court of Michigan in *People* v. *Den Uyl*, 318 Mich. 645, 651:

> "It seems like a travesty on verity to say that one is not subjected to self-incrimination when compelled to give testimony in a State judicial proceeding which testimony may forthwith be used against him in a Federal criminal prosecution."

If the dissent in *Feldman* v. *United States*, *supra*, had prevailed and testimony compelled from a witness in a state proceeding had been barred from use against him when he became a defendant in a federal proceeding, protection of the *federal* right against self-incrimination could be left to the federal courts. But *Feldman*, until it is overruled, controls the regimes under which state investigations are made and federal prosecutions conducted. As long as it is on the books the only place a witness, who is being examined in state proceedings about

matters that may incriminate him under federal laws, can protect his rights against self-incrimination under the Fifth Amendment is in the state courts.

Knapp v. *Schweitzer*, 357 U. S. 371, is contrary to the disposition I would make of the present cases. But it is not a principled decision that addressed itself to the proposition that unless the *federal* right is protected in the state proceeding it is lost forever. The opinion in that case was concerned with maintaining the vitality of state investigations. Not once did it mention *Feldman* v. *United States, supra,* nor address itself to the dilemma created by that decision. Nowhere does it explain how in light of *Feldman* v. *United States* the *federal* right can be protected and the vitality of state investigations also maintained. I have said enough to indicate that both cannot be done by affirming these judgments. As long as *Feldman* v. *United States* stands on the books, the state courts should be required to recognize the *federal* right against self-incrimination—lest it be lost forever.